FILED
CHARLOTTE, NC

JUN 2 2017

US District Court
Western District of NC

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

Case No. 3:15-cv-00366

GUY M. DUGAN, KAREN DUGAN, and MARK S. DUGAN AS TRUSTEE OF THE GDM FAMILY TRUST,

Plaintiffs,

v.

PHILLIPS WIEGAND, JR., PILIANA M. SCHAMENS, DAVID W. SCHAMENS, INVICTUS CAPITAL GROWTH AND INCOME FUND, LLP, INVICTUS ASSET MANAGEMENT, LLC, INVICTUS INCOME FUND, LLP, INVICTUS REAL ESTATE INVESTMENT, LLP, INVICTUS FUNDS, LLC, TRADEDESK FINANCIAL GROUP, INC., TRADEDESK FINANCIAL CORP., TRADESTREAM ANALYTICS, LTD., INVICTUS CAPITAL GROWTH FUND, LLP, INVICTUS HOLDINGS, LLP, TRADEDESK CAPITAL, LLC,

Defendants.

MOTION TO ENFORCE SETTLEMENT, OR ALTERNATIVELY TO VACATE DEFAULT AND FOR LEAVE TO ANSWER

Defendants Piliana M. Schamens, David W. Schamens, respectfully move to enforce a settlement between the parties, or alternatively, to vacate the default and for leave to file an answer. The motion is requested on the following grounds:

1. The parties entered into a settlement agreement, which provided, among other things, that Plaintiffs would dismiss the suit upon certain payments by the Defendants.
2. Defendants made the payments.
3. The Plaintiffs failed to credit payments toward the settlement, and failed to dismiss suit resulting in a breach of the settlement agreement.

4. Defendants seek to enforce the settlement agreement, specifically dismissing this and other suits pending against Defendants.
5. Alternatively, Defendants seek to vacate the default entered against them as their delay was for good cause and for leave to file an answer.

A memorandum of law and affidavit are filed in support of this motion.

Respectfully submitted,

Defendants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed and served the foregoing To Enforce Settlement, Or Alternatively To Vacate Default And For Leave To File Answer with the Clerk of Court using the CM/ECF system, which shall send service copies to the following:

Mark R. Kutny, Esq.
HAMILTON STEPHENS STEELE + MARTIN, PLLC
201 South College Street, Suite 2020
Charlotte, North Carolina 28244-2020
mkutny@lawhssm.com
Attorneys for Plaintiffs

Dated:

Respectfully submitted,

[name]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

GUY M. DUGAN, KAREN DUGAN, and MARK S. DUGAN AS TRUSTEE OF THE GDM FAMILY TRUST,

Plaintiffs,

v.

PHILLIPS WIEGAND, JR., PILIANA M. SCHAMENS, DAVID W. SCHAMENS, INVICTUS CAPITAL GROWTH AND INCOME FUND, LLP, INVICTUS ASSET MANAGEMENT, LLC, INVICTUS INCOME FUND, LLP, INVICTUS REAL ESTATE INVESTMENT, LLP, INVICTUS FUNDS, LLC, TRADEDESK FINANCIAL GROUP, INC., TRADEDESK FINANCIAL CORP., TRADESTREAM ANALYTICS, LTD., INVICTUS CAPITAL GROWTH FUND, LLP, INVICTUS HOLDINGS, LLP, TRADEDESK CAPITAL, LLC,

Defendants.

Case No. 3:15-cv-00366

MEMORANDUM OF LAW ON BEHALF OF DEFENDANTS IN SUPPORT OF THEIR MOTION TO ENFORCE A SETTLEMENT AGREEMENT, OR ALTERNATIVELY VACATE DEFAULT AND FOR LEAVE TO RESPOND TO THE COMPLAINT

David Schamens
Pro Se Litigant

PRELIMINARY STATEMENT

This matter should be summarily dismissed because the parties entered into a settlement agreement, requiring the dismissal of this action after plaintiffs received the first payment, which payment was received by plaintiffs.

Defendants Piliana M. Schamens; David W. Schamens; Invictus Capital Growth and Income Fund, LLP ("Invictus Capital Growth and Income"); Invictus Asset Management, LLC ("Invictus Asset"); Invictus Income Fund, LLP ("Invictus Income"); Invictus Real Estate Investment, LLP ("Invictus Real Estate"); Invictus Funds LLC ("Invictus Funds"); TradeDesk Financial Group, Inc. ("TradeDesk Financial Group"); TradeDesk Financial Corp.; TradeStream Analytics, Ltd. ("TradeStream Analytics"); Invictus Capital Growth Fund, LLP ("Invictus Capital"); Invictus Holdings, LLP ("Invictus Holdings"); and TradeDesk Capital, LLC ("TradeDesk Capital")(collectively "Defendants"), ask the Court to enter an order enforcing the settlement agreement and in turn dismissing this action with prejudice.

Rather than abide by the terms of the settlement agreement, plaintiffs Guy M. Dugan, Karen Dugan and Mark S. Dugan as Trustee of the GDM Family Trust (collectively "Plaintiffs"), have engaged a pattern of conduct repudiating two settlement agreements, retaining funds already paid by Defendants and improvidently seeking entry of a default judgment to unjustly enrich themselves. The Plaintiffs made a deal, accepted funds in settlement which triggers the dismissal of this action.

In the alternative, should the Court conclude that there are issues of fact that cannot be resolved in a summary proceeding, Defendants ask that the entry of default be vacated and Defendants be permitted to answer or otherwise respond to the complaint.

STATEMENT OF FACTS

Plaintiffs filed their complaint on August 11, 2015 ("Federal Action"), alleging, in the main that they had provided funds to Defendants that were to be invested, that they had been misled by Defendants and that Plaintiffs sought return of their funds, contrary to the agreements for funding. (ECF No. 1.)

Months earlier, in December 2014, Plaintiffs filed suit against Defendants in North Carolina Superior Court, Mecklenburg County, Docket No. 14-CVS-22820 ("State Action") alleging much the same conduct as the Federal Action.

In the Federal Action, Defendants accepted waiver of service November 10, 2015, whereupon a response to the complaint was due by January 11, 2016. (ECF Nos. 12 through 24.) The time in which Defendants were to respond to the complaint was further extended by Order of the Court. (ECF Nos. 32, 37, 39.) During this period the parties were in settlement discussions.

In March 2016, the Court denied the last request for an extension by Defendants to answer or respond to the complaint. (ECF No. 42.) The Clerk on March 7, 2016, entered a default against Defendants. (ECF No. 43.)

Two days later, on March 9, 2016, the parties entered into a settlement agreement with regard to both the Federal and State Actions ("March 9 Settlement Agreement"). (Declaration of David Schamens, dated June 1, 2017 ("Schamens Decl."), at ¶5 and Exhibit A.) The March 9 Settlement Agreement provided that Defendants would make three payments totaling $200,000. After receipt of the first payment of $75,000 Plaintiffs were obligated to dismiss the State Action. (*Id.*) After receipt of the third payment, Plaintiffs were required to dismiss the Federal Action. (*Id.*)

Moreover, Plaintiffs expressly agreed "not to seek a default judgment in the Federal Lawsuit," "[a]s long as there is no breach of this Agreement by [Defendants]." (*Id.*)

Due to difficulties in wiring the first payment, Defendants' counsel[1] discussed the issue with Plaintiffs' counsel, who agreed not to pursue a breach or proceed with either case. (Schamens Decl. at ¶6.) Despite the difficulties, Defendants did make the first payment on April 8, 2016. (Schamens Decl. at ¶6 and Exhibit C.) However, Plaintiffs did not dismiss the State Action as required. (Schamens Decl. at ¶8.)

Plaintiffs took the position that they had never received the payment by wire transfer, despite evidence that shows the contrary. (Schamens Decl. at ¶9.).

Although Plaintiffs maintained that they had not received the first payment, that view is not sustainable. On June 2, 2016, counsel for Plaintiffs admitted before the Court in the State Action that he had received Defendants' first payment. So instead, counsel pressed that the receipt of the funds did not constitute acceptance. (Schamens Decl. at ¶9 and Exhibit C.)

On July 15, 2016, in preparation for the next payments and to pay for counsel fees, Defendants wired $140,000 to Defendants' counsel's trust account.

When the funds were not applied the settlement, Defendants' requested that Plaintiffs return the first payment. *Id.* Plaintiffs never returned any of the sums paid. (Schamens Decl. at ¶10.)

Plaintiffs, having received and retained the payments from Defendants, nonetheless, filed a motion for default judgment on August 8, 2016. (ECF No. 46.) Defendants were not served with the motion for default judgment. (Schamens Decl. at ¶12; ECF No. 55.)

---

[1] Although no formal appearance was made by counsel for Defendants in the Federal Action, Defendants' counsel in the State Action acted on behalf of Defendants in regard to the March 9 Settlement Agreement.

While the motion for default judgment was pending, the parties entered into a second settlement agreement on October 24, ("October 24 Settlement Agreement"). (Schamens Decl. at ¶13 and Exhibit E.)

The October 24 Settlement Agreement again referenced and applied to both Federal and State Actions. It called for Defendants to make seven payments for a total of $375,000. (*Id.*) Defendants also provided a promissory note in the amount of $570,179.69 and Deed of Trust on David Schamens's home. This was intended as collateral for enforcement of the Note, if warranted. (*Id.*)

Under the October 24 Settlement Agreement, if the first and second payments of $75,000 and $50,000 respectively, were received by Plaintiffs, they were obligated to dismiss the State and Federal Actions. (*Id.*)

In furtherance of the settlement, Plaintiffs filed for a stay of a ruling on the motion for default judgment until February 15, 2017, at which time it was anticipated that the Federal Action would be dismissed. (ECF No. 57.) That request was granted by the Court. (ECF No. 58.)

Following execution of the October 24 Settlement Agreement, Plaintiffs refused to credit the $75,000 payment by Defendants in April 2016 or return the $75,000 to Defendants. In other words, the Plaintiffs converted the $75,000 without basis. (Schamens Decl. at ¶15.)

Nevertheless, while these discussions continued regarding the $75,000 held by Plaintiffs, Defendants on November 14, 2016, wired to their counsel an additional $75,000 which was intended to provide additional payments under the October 24, Settlement Agreement. (Schamens Decl. at ¶16 and Exhibit F.)

Notwithstanding that Plaintiffs had funds in their possession which they refused to return, Plaintiffs filed notice asking the Court to rule on the pending motion for default judgment. (ECF No. 61.)

Defendants nevertheless sought to continue with the terms of the October 24 Settlement Agreement. On March 3, 2017, Defendants wired $50,000 to their counsel for payment to Plaintiffs. (Schamens Decl. at ¶18 and Exhibit G.) Due to Plaintiffs' refusal to credit or return the first payment of $75,000, Defendants' counsel withheld the $50,000 payment. (Schamens Decl. at ¶18.)

On March 24, 2017, David Schamens received a notice of forecloser on his home, based on the Promissory Note and Deed of Trust executed with the November 10 Settlement. (Schamens Decl. at ¶19 and Exhibit H.)

ARGUMENT

POINT I

THE COURT SHOULD ENFORCE THE TERMS OF THE OCTOBER 24 SETTLEMENT INCLUDING DISMISSAL OF THIS ACTION

Defendants seek to enforce the October 24 Settlement Agreement. Plaintiffs received the payment from Defendants. That triggered the obligation by Plaintiffs to file dismiss.

To be sure, Plaintiffs cannot accept and hold the substantial funds and then ignore their duty to end the litigation.

A. Standard of Review

In the context of the authority of the trial court to summarily enforce a settlement agreement and to enter judgment based on that agreement without a plenary hearing, the Fourth Circuit has stated:

> [T]o exercise its inherent power to enforce a settlement agreement, a district court (1) must find that the parties reached a complete agreement and (2) must be able to determine its terms and conditions. If there is a factual dispute over the existence of an agreement, over the authority of attorneys to enter into the agreement, or over the agreement's terms, the district court may not enforce a settlement agreement summarily.

Hensley v. Alcon Labs., Inc., 277 F.3d 535, 540-41 (4th Cir. 2002) (citations omitted). Otherwise, the court must hold a plenary hearing. (*Id.*) Moreover, the "summary procedure has been found to be 'admirably suited to situations where, for example, a binding settlement bargain is conceded as shown, and the excuse for nonperformance is comparatively unsubstantial.'" *Millner v. Norfolk & W. R. Co.*, 643 F.2d 1005, 1009 (4th Cir. 1981) (quoting *Autera v. Robinson*, 419 F.2d 1197, 1200 (D.C. Cir. 1969

B. October 24 Settlement Agreement Requires Dismissal of the Federal Action

The October 24 Settlement Agreement expressly evidences that all parties intended to enter into the agreement. *Moore v. Beaufort Cty.*, 936 F.2d 159, 162 (4th Cir. 1991) ("In deciding whether a settlement agreement has been reached, the Court looks to the objectively manifested intentions of the parties."). The agreement is also comprehensive in covering the Defendants' requirement for payment and Plaintiffs requirements to dismiss the State and Federal Actions. Neither Plaintiffs nor Defendants equivocated about the existence or validity of the October 24 Settlement Agreement.

Instead, Plaintiffs claim that they did not "accept" Defendants' payment even though the payment was wired to Plaintiffs' counsel and is in their possession. (Schamens Decl. at ¶9 and Exhibit C.). To explain their lack of acceptance, Plaintiffs argue that Defendants are in breach of the agreement and they likely rely on the provision in the agreement that provides that "Time is of the essence in relation to all payments due pursuant to this Agreement." (Schamens Decl., Exhibit

A at 2). That argument, however, ignores the fact that they acknowledged Defendants' difficulty in completing the first payment on the due date and provided Defendants extra time to complete the payment. (Schamens Decl. at ¶6.)

The agreement here is to be "construed pursuant to and governed by the laws of the State of North Carolina, without regard to the conflict of laws principles thereof." (Schamens Decl., Exhibit A at p. 7). Though the term "time is of the essence" is recognized in certain contexts under North Carolina law, *see Makuen v. Elder*, 170 N.C. 510, 512 (1915), it is well-settled in North Carolina that "[t]he provisions of a written contract may be modified or waived by a subsequent parol agreement, or by conduct which naturally and justly leads the other party to believe the provisions of the contract are modified or waived," *42 E., LLC v. D.R. Horton, Inc.*, 218 N.C. App. 503, 511 (Ct. App. 2012). That principle applies to "time is of the essence" provisions and even when the contract contains provisions that require modifications in writing. *Id.* (citing *Childress v. C. W. Myers Trading Post, Inc.*, 247 N.C. 150, 156 (1957)).

Plaintiffs' argument that Defendants breached the March 9 Settlement Agreement is unavailing. Plaintiffs waived the "time is of the essence" provision both through oral agreement and by their conduct. Orally, Plaintiffs stated that they would not pursue a breach or proceed with the case as a result of Defendants' failure to meet the first deadline. (Schamens Decl. at ¶9.) Moreover, when Defendants did pay two weeks later, Plaintiffs did not return the money to Defendants. In fact, they never did return the money. (Schamens Decl. at ¶10.) This conduct constitutes acceptance, which is a waiver of the "time is of the essence" provision.

Plaintiffs are the party in breach because Plaintiffs did not dismiss the State Action after the first payment. Defendants therefore ask that the Court enforce the terms of the October 24 Settlement Agreement, and compel Plaintiffs to dismiss the State Action, credit the second $75,000 payment to the first Settlement Agreement and compel Plaintiffs dismiss to this case upon Defendants' payment of the remaining $50,000.

POINT II

ALTERNATIVELY, THE COURT SHOULD VACATE THE DEFAULT AND PERMIT DEFENDANTS TO RESPOND

If the Court concludes that there is a factual dispute which precludes enforcement of the October 24 Settlement Agreement, it should vacate the default and permit Defendants to address the merits of this case.

A. Standard of Review

Fed. R. Civ. P. 55(c) provides that "[t]he court may set aside an entry of default for good cause . . . ." The factors to consider when evaluating a motion to vacate a default, are "whether the moving party has a meritorious defense, whether it acts with reasonable promptness, the personal responsibility of the defaulting party, the prejudice to the party, whether there is a history of dilatory action, and the availability of sanctions less drastic." *Payne v. Brake*, 439 F.3d 198, 204-05 (4th Cir. 2006).

Rule 55(c) is to be "liberally construed in order to provide relief from the onerous consequences of defaults and default judgments." *Tolson v. Hodge*, 411 F.2d 123, 130 (4th Cir. 1969). Accordingly, "[a]ny doubts about whether relief should be granted should be resolved in favor of setting aside the default so that the case may be heard on the merits." Id. Indeed, the "strong preference that . . . defaults be avoided and that claims and defenses be disposed of on their merits" represents an imperative, the "primacy [of which] is never doubted." *Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 616 F.3d 413, 417 (4th Cir. 2010).

B. Meritorious Defense

Should this matter be considered on the merits, Defendants intend to assert several defenses.

First the matter is barred by a settlement agreement as discussed more fully above.

Second, this action is duplicitous and should be stayed as Plaintiffs previously filed a separate action in North Carolina state court. Plaintiffs should not be permitted to file multiple actions for the essentially the same allegations.

Third, the thrust of Plaintiffs' complaint centers around allegation of fraud. However, Plaintiffs fail to plead the allegations with sufficient particularity, making them subject to dismissal.

C. Reasonable Promptness

Defendants have been prompt and diligent in regard to a vacation of default. Specifically, they have proceeded in good faith in multiple efforts to resolve the matter without the need for litigation.

At the outset of the suit, Defendants engaged in what they believed to be meaningful negotiations with Plaintiffs which lead to the March 9 Settlement Agreement, which was supposed to end the matter. Then despite the payments by Defendants and failure to dismiss the action, in an additional effort to resolve the dispute without resorting to litigation, the parties negotiated and entered into the October 24 Settlement Agreement. Upon the parties' consent and as approved by the Court, the subject of default was stayed to allow the terms of the settlement agreement to play out.

In February 2017, when Plaintiffs renewed their motion for default judgment, David Schamens, who has been acting on behalf of the Defendants was suffering from pneumonia. (Schamens Decl. at ¶20.)

Despite the long procedural history, Defendants have been unrepresented until now and have been operating pursuant to settlements negotiated with Plaintiffs.

It was not until the second Settlement Agreement broke down and Plaintiffs renewed their motion for default judgment that Defendants were on notice to vacate the default.

D. Personal Responsibility

To the extent Defendants are personally responsible for the default, it is predicated on the fact that they were unrepresented and apparently and reasonably misunderstood that they were operating under a Settlement Agreement with Plaintiffs.

As explained previously, the March 9 Settlement Agreement was entered the day after the entry of default, meaning settlement discussions had been taking place before the entry of default. At the time, Defendants, perhaps wrongly, assumed that the entry of default would be a non-issue as the parties were nearing settlement. Indeed, the parties settled immediately after default, and had the Plaintiffs not breached the first Settlement Agreement, the default would be rendered moot when the case was dismissed under the terms of the Settlement Agreement.

Defendants continued to believe the default was a non-issue and that the issues of the settlement would be resolved. Only when the motion for default judgment was filed, did Defendants have any idea that the default would be an issue. Regardless, Defendants again sought to settle the issue, rather than litigate it, and ultimately entered a second Settlement Agreement. It was then not until the second Settlement Agreement broke down that the default became an issue.

Thus, to the extent Defendants sought to settle, rather than litigate the case and default, are the responsible for the entry of default.

E. Prejudice to Defendants

Defendants would be unjustly prejudiced should the default remain and default judgment be entered. Defendants have already paid $150,000 to Plaintiffs believing that this was to be used to resolve the dispute.

Should default be entered, Defendants would have paid those monies in vain, as Defendants would be denied both the opportunity to litigate as well as the opportunity to fairly settle this case.

The prejudice to Plaintiffs, on the other hand, is minimal as they have already hold $150,000., and the prejudice of having to prove their case is the burden they assumed when filing suit. *See Mavilla v. Absolute Collection Serv.*, 539 Fed. Appx. 202, 206 (4th Cir. 2013) ("Appellants' counsel himself admitted that the [plaintiffs] would 'suffer no prejudice from having to prove their case' . . . ."). On balance, the prejudice to Defendants substantially outweighs the prejudice to Plaintiffs.

F. History of Dilatory Action

Admittedly, Defendants made four motions to extend the time to answer the complaint, but in total the amount of time sought was less than 60 days. (ECF Nos. 32, 36, 38, 41). The last motion, however, which was denied, sought an extension to March 7, 2016. As stated previously, the first Settlement Agreement was then signed March 9, 2016. From that point, any delay is the result of Plaintiffs' breach of the Settlement Agreement by not credit or returning the first payment of $75,000.

G. Availability of Sanctions Less Drastic

Defendants can think of no sanction more drastic than entry of default and then default judgment in this case. Defendants suggest that a less drastic sanction than default would be if the Court held the remaining $50,000 in trust until the outcome of any non-summary proceeding to determine the applicability of either Settlement Agreement. This sanction would be appropriate because it would ensure immediate payment to Plaintiffs if the Court decides to enforce either Settlement Agreement.

In sum, the factors demonstrate that good cause exists to permit vacating the default so that this case may be heard on the merits. The case law makes clear that "[a]ny doubts about whether relief should be granted should be resolved in favor of setting aside the default . . . ." *Tolson*, 411 F.2d at 130. If there are any doubts that there is good cause to vacate the default, those doubts should be resolved in favor of Defendants.

CONCLUSION

For all of the reasons stated more fully above, the Court should either (1) enforce the settlement agreement; or alternatively (2) vacate the default and permit Defendants to file an answer or otherwise respond to the complaint.

June 2, 2017

By: David Schamens, Pro Se

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

GUY M. DUGAN, KAREN DUGAN, and MARK S. DUGAN AS TRUSTEE OF THE GDM FAMILY TRUST,

Plaintiffs,

v.

PHILLIPS WIEGAND, JR., PILIANA M. SCHAMENS, DAVID W. SCHAMENS, INVICTUS CAPITAL GROWTH AND INCOME FUND, LLP, INVICTUS ASSET MANAGEMENT, LLC, INVICTUS INCOME FUND, LLP, INVICTUS REAL ESTATE INVESTMENT, LLP, INVICTUS FUNDS, LLC, TRADEDESK FINANCIAL GROUP, INC., TRADEDESK FINANCIAL CORP., TRADESTREAM ANALYTICS, LTD., INVICTUS CAPITAL GROWTH FUND, LLP, INVICTUS HOLDINGS, LLP, TRADEDESK CAPITAL, LLC,

Defendants.

Case No: 3:15-cv-00366

DECLARATION OF DAVID W. SCHAMENS

I, David W. Schamens, declares:

1. I am one of the defendants in this action and I am a General Partner of Invictus Real Estate Investment, LLP, a Member of Invictus Funds, LLC, the Director of TradeDesk Financial Group, Inc., Director of TradeStream Analytics, Ltd., and Director of TradeDesk Capital, LLC and a principal of Invictus Capital Growth And Income Fund, LLP, Invictus Asset Management, LLC, Invictus Income Fund, LLP, TradeDesk Financial Corp., Invictus Capital Growth Fund, LLP, and Invictus Holdings, LLP (collectively "Defendants").

2. I submit this declaration in support of Defendants' motion to enforce the settlement, or alternatively to vacate the default and for leave to file an answer.

3. On August 11, 2015, Plaintiffs filed the complaint in this matter ("Federal Action").

4. Plaintiffs also filed a similar suit against Defendants in North Carolina Superior Court, Mecklenburg County, Docket No. 14-CVS-22820 ("State Action") On December 12, 2014.

5. On March 9, 2016, the parties entered into a settlement agreement with regard to both cases. The agreement provided, in part, that Defendants would make three payments totalling $200,000. After receipt of the first payment of $75,000 Plaintiffs were required to dismiss the State Action. After receipt of the third payment, Plaintiffs were further obligated to dismiss the Federal Action. Plaintiffs specifically agreed "not to seek a default judgment in the Federal Lawsuit," "[a]s long as there is no breach of this Agreement by [Defendants]." Attached as Exhibit A is a true and correct copy of the March 9, 2016 Settlement Agreement.

6. On March 24, 2017, the due date of the first payment, when I initiated a wire transfer to Plaintiffs, the custodian of Defendants' bank account refused to release the funds because of the pending litigation. It is my understanding that Defendants' counsel discussed the issue with Plaintiffs' counsel who agreed not to pursue a breach or proceed with either case.

7. On April 8, 2016, I made the first payment by wire transfer to Plaintiffs of $75,000. Attached as Exhibit B is a true and correct copy of the wire transfer statement.

8. Plaintiffs did not dismiss the State Action as called for by the settlement agreement.

9. Initially, Plaintiffs claimed they never received the wire transfer. Nonetheless, on June 2, 2016, in a court appearance in the State Action, counsel for Plaintiffs admitted before the

Court that they had received Defendants' first payment, but that the receipt of the funds did not constitute acceptance. In response, Defendants' requested that Plaintiffs return the first payment. Attached as Exhibit C is a true and correct copy of a June 9, 2016 letter memorializing those events and Defendants' request.

10. Plaintiffs never returned the first payment.

11. On July 15, 2016, in preparation for the next payments and to pay for counsel fees, I wired $140,000 to Defendants' counsel's trust account. Attached as Exhibit D is a true and correct copy of the wire transfer statement.

12. Plaintiffs, nonetheless on August 8, 2016, filed a motion for default judgment in this, the Federal Action. (ECF No. 46). I was not served with a copy of the motion for default judgment.

13. After further discussions, on October 24, the parties entered into a settlement agreement ("October 24 Settlement Agreement"). The October 24 Settlement Agreement provided that Defendants would make seven payments totaling $375,000. Defendants also provided a promissory note for $570,179.69 and Deed of Trust on my home as collateral for enforcement of the October 24 Settlement Agreement. Under the October 24 Settlement Agreement, if the first and second payments were received, among other conditions, Plaintiffs were required to dismiss the State and Federal Action. Attached as Exhibit E is a true and correct copy of the October 24, 2016 Settlement Agreement.

14. The same day, Plaintiffs filed a stay of the motion for default judgment in the Federal Action, which the Court granted. (ECF Nos. 57, 58.)

15. Plaintiffs neither applied the $75,000 I had paid in April 2016 towards payment of the settlement nor returned any of those funds.

16. On November 14, 2016, Defendants' counsel wired $75,000 to Plaintiffs. Attached as Exhibit F is a true and correct copy of Defendants' counsel's account statement.

17. On February 21, 2017, Plaintiffs filed a notice in the Federal Action, asking the Court to rule on the pending motion for default judgment. (ECF No. 61.)

18. On March 3, 2017, I wired $50,000 to Defendants' counsel for payment to Plaintiffs. Because Plaintiffs would not apply as payment or return the first payment of $75,000, counsel withheld the $50,000 payment. Attached as Exhibit G is a true and correct copy of the wire transfer statement.

19. On March 24, 2017, I received a notice that my home was being foreclosed upon as a result of the Promissory Note and Deed of Trust executed with the second Settlement Agreement. Attached as Exhibit H is a true and correct copy of the Notice of Hearing as to Commencement of Foreclosure Proceedings.

20. At the end of February and into early March 2017, I was in and out of the hospital with pneumonia. After recovering from pneumonia, I began to search for counsel for this case at the end of March.

Dated: 6/2, 2017

David W. Schamens

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed and served the foregoing To Enforce Settlement, Or Alternatively To Vacate Default And For Leave To File Answer with the Clerk of Court using the CM/ECF system, which shall send service copies to the following:

Mark R. Kutny, Esq.
HAMILTON STEPHENS STEELE + MARTIN, PLLC
201 South College Street, Suite 2020
Charlotte, North Carolina 28244-2020
mkutny@lawhssm.com
Attorneys for Plaintiffs

Dated:

Respectfully submitted,

[name]

Exhibit A

NORTH CAROLINA
MECKLENBURG COUNTY

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

THIS CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE (hereinafter, "Agreement") is made and entered into on March 9, 2016, by and between AGGIE INVESTMENT, LLC ("Aggie"), Guy M. Dugan ("Mr. Dugan"), Karen Dugan ("Mrs. Dugan"), and the GDM Family Trust (the "Trust") (collectively, the "Dugan" parties or the "Dugans"), on the one hand, and David W. Schamens ("Schamens"), Piliana M. Schamens ("P. Schamens"), INVICTUS CAPITAL GROWTH AND INCOME FUND, LLP ("ICG&IF"), INVICTUS ASSET MANAGEMENT, LLC ("IAM"), INVICTUS INCOME FUND, LLP ("IIF"), INVICTUS REAL ESTATE INVESTMENT, LLP ("IREI"), INVICTUS FUNDS, LLC ("IF"), TRADEDESK FINANCIAL GROUP, INC. ("TFG"), TRADEDESK FINANCIAL CORP. ('TFC"), TRADESTREAM ANALYTICS, LTD. ("TA"), INVICTUS CAPITAL GROWTH FUND, LLP ("ICGF"), INVICTUS HOLDINGS, LLP ("IH"), and TRADEDESK CAPITAL, LLC ("TC") (collectively, the "Invictus" parties or "Invictus"), on the other hand, (Invictus and the Dugans are jointly referred to herein as the "Parties").

RECITALS

WHEREAS, the Dugans have alleged beginning in 2003 and continuing for a number of years, the Dugans invested a total of approximately $1,200,000.00 with Invictus through various funds, common stock and debentures of the Invictus Parties (the "Investments");

WHEREAS, the Dugan have alleged the most recent account statements and representations made to the Dugans from some of the Invictus parties disclose gains of approximately $750,000.00 on the Investments (the "Gains");

WHEREAS, the Dugans have alleged the Dugans requested in November 2012 that the Invictus parties liquidate the Investments and Gains and forward the proceeds to the Dugans;

WHEREAS, the Dugan have alleged the Invictus parties have not liquidated the Investments and Gains as requested and have not forwarded the proceeds to the Dugans;

WHEREAS, on December 12, 2014, Aggie filed a lawsuit in Mecklenburg County Superior Court, Case No. 14-CVS-22820, against some of the Invictus parties alleging claims for Fraudulent Inducement, Fraud, Breach of Fiduciary Duty, Constructive Fraud, Conversion, Unfair and Deceptive Trade Practices, Piercing of the Corporate Veil, Civil Conspiracy, Accounting, Unjust Enrichment, and Constructive Trust (the "Aggie Lawsuit");

WHEREAS, on or about August 11, 2015, Mr. and Mrs. Dugan and the Trust brought a federal court lawsuit in the Western District of North Carolina, Case No: 3:15-cv-366-RJC-DSC alleging similar claims as in the Aggie Lawsuit (the "Federal Lawsuit");

WHEREAS, an Entry of Default was entered against the Invictus Parties in the Federal Lawsuit on or about March 7, 2016 (the "Entry of Default");

WHEREAS, Invictus has generally denied the allegations of the Aggie Lawsuit and the Federal Lawsuit; and

WHEREAS, the Dugans, on the one hand, and the Invictus parties, on the other, desire to fully and finally resolve any and all disputes between them related to the Investments, the Gains, the Aggie Lawsuit, and the Federal Lawsuit.

NOW, THEREFORE, for and in consideration of the covenants and undertakings set forth herein, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Payment. The settlement amount of Two Hundred Thousand Dollars and NO/100 **($200,000.00)** shall be paid by the Invictus parties, jointly and severally, as follows (collectively, the "Settlement Payments" and each installment payment thereof, a "Settlement Payment"):

a. An initial payment in the amount of Seventy-Five Thousand Dollars and NO/100 ($75,000.00) shall be made on or before March 24, 2016 (the "First Payment");
b. A second payment in the amount of Seventy-Five Thousand Dollars and NO/100 ($75,000.00) shall be made on or before April 29, 2016 (the "Second Payment");
c. A final payment in the amount of Fifty Thousand Dollars and NO/100 ($50,000.00) shall be made on or before May 31, 2016 (the "Final Payment").

2. Delivery of Payments. All payments shall be delivered to counsel for the Dugan parties by wire transfer to the **Hamilton Stephens Steele + Martin PLLC Trust Account**. Wire instructions will be separately provided to counsel for the Invictus Parties. Time is of the essence in relation to all payments due pursuant to this Agreement.

3. Consent Order. The Invictus parties' joint and several obligations to make the Settlement Payments to the Dugan parties and abide by the terms of this agreement shall be secured by a Consent Order with regard to Aggie's third motion, pursuant to Rule 37 of the North Carolina Rules of Civil Procedure, for an Order striking the Answer of the Invictus Parties named in the Aggie Lawsuit, the terms of which are incorporated herein by reference and attached as **Exhibit A** (the "Consent Order"). Counsel for the Parties are authorized to present the Consent Order to the presiding judge for signature at the March 10, 2016 hearing. The Consent Order is to be executed by the presiding judge, but not filed. Rather, the Consent Order shall be delivered to the law firm of Hamilton Stephens Steele + Martin, PLLC, ATTN: Mark Kutny, 201 S. College St., Ste. 2020, Charlotte, NC 28244, to be held in trust until such Consent Order may be filed under the terms of this Agreement or destroyed. The Consent Order may be entered and filed if the Invictus Parties fail to make the First Payment.

4. Conditions for Dismissal of the Aggie Lawsuit. Within fourteen (14) days after receipt of the First Payment in the amount of Seventy-Five Thousand Dollars and NO/100 ($75,000.00), the parties shall execute and file a Stipulation of Dismissal, without prejudice, of all claims in the Aggie Lawsuit. The Stipulation of Dismissal shall provide that each Party shall bear its own costs and attorneys' fees and that it shall have no effect on the Federal Lawsuit.

5. Conditions for Dismissal of the Federal Lawsuit. Within fourteen (14) days after receipt of both the Second Payment and Final Payments in the total amount of One-Hundred Twenty-Five Thousand Dollars and NO/100 ($125,000.00), the parties shall execute and file a Stipulation of Dismissal, without prejudice, of all claims in the Federal Lawsuit. The Stipulation of Dismissal shall provide that each Party shall bear its own costs and attorneys' fees. After receipt of the First Payment, the Parties shall notify the United States District Court for the Western District of North Carolina that they have settled the Federal Lawsuit contingent upon the terms of this Agreement being fulfilled by the Invictus Parties, and that if the terms are fully consummated, a Stipulation of Dismissal will be filed by June 15, 2016. As long as there has been no breach of this Agreement by the Invictus Parties, the Dugan Parties agree not to seek a default judgment in the Federal Lawsuit.

6. Indemnification. The Invictus parties, jointly and severally, covenant and agree to fully indemnify and hold harmless the Dugan parties for any and all claims, demands, actions, and causes of action whatsoever made against the Dugan parties, including, without limitation, those for damages (whether direct, indirect, nominal, consequential, special and/or incidental), disgorgement, attorneys' fees, costs and expenses, of every kind and nature whatsoever, that relate in any manner to the Invictus parties, including, without limitation, their business, the Dugan parties' ownership of any interest in the Invictus parties, this Agreement, and any dealings whatsoever between the Dugan parties and the Invictus parties, whenever such claims may be asserted.

7. Release. In consideration of the mutual promises and covenants set forth herein (the sufficiency of which is hereby acknowledged), effective on the ninety-fifth (95) day after the Settlement Payments have been made timely, in full, and are not subject to any claim or disgorgement of any kind by any party, the Dugan parties hereby release the Invictus parties and their representatives, heirs, successors, and assigns (but not including Phillips Wiegand, Jr.) from all claims, liabilities, suits, damages, amounts owed, and causes of action of any kind whatsoever, including claims for attorneys' fees, consequential damages, extra-contractual damages, and any other actual, alleged or perceived costs, damages or expenses of any nature whatsoever arising from all events (known or unknown, liquidated or unliquidated) prior to the date of the execution of this Agreement including, without limitation, those related to the facts and allegations set forth in the pleadings in the Aggie Lawsuit and/or the Federal Lawsuit.

In consideration of the mutual promises and covenants set forth herein (the sufficiency of which is hereby acknowledged), and effective upon execution of this agreement in full, the Invictus parties hereby release the Dugan parties and their representatives, heirs, successors, and assigns from all claims, liabilities, suits, damages, amounts owed, and causes of action of any kind whatsoever, including claims for attorneys' fees, consequential damages, extra-contractual damages, and any other actual, alleged or perceived costs, damages or expenses of any nature whatsoever arising from all events (known or unknown, liquidated or unliquidated) prior to the date of the execution of this Agreement including, without limitation, those related to the facts and allegations set forth in the pleadings in the Aggie Lawsuit and/or the Federal Lawsuit.

All Parties represent and warrant that there has been no assignment or other transfer of any interest in any claims or potential claims that are covered by the above releases.

8. Tolling of Time-Related Defenses. Any and all applicable statutes of limitations, statutes of repose, the doctrine of laches, and all other time-based defenses arising from the facts and circumstances set forth in the pleadings in the Aggie Lawsuit and/or the Federal Lawsuit or any statute with respect to any claims by the Parties to this Agreement relating in any manner to those items described in the "whereas" clauses above or otherwise recoverable by the Dugan parties against the Invictus parties are hereby tolled as they relate to the Parties, beginning as of the Effective Date (as hereinafter defined). The passage of time during the Tolling Period (as hereinafter defined) shall not be counted for purposes of any applicable statutes of limitations, statutes of repose, laches, Rule of Civil Procedure 41, or any other time-based defenses in any legal proceeding or arbitration in which the Parties assert claims covered by this Agreement. The Parties agree that they will not assert any defense or matter in avoidance based on any statute of limitations, statutes of repose, laches or other time-related defense based, in whole or in part, on the passage of time during the Tolling Period as hereinafter defined in any legal proceedings or arbitration with respect to any of the claims covered by this Agreement. For purposes of this Agreement, the term "Effective Date" shall mean the date respective claims in the Aggie Lawsuit and the Federal Lawsuit were initially filed and the term "Tolling Period" shall commence and continue from the Effective Date.

9. Confidentiality. The Parties to this Agreement agree to the keep the terms hereof strictly confidential, except that the Parties may disclose the terms hereof to their counsel, accountants and other advisors to the extent necessary to comply with their respective legal obligations. The Parties may further disclose the terms of this Agreement to the extent necessary to enforce this Agreement and in response to proper legal process.

10. Guaranty of Payment and Performance. If the Settlement Payments and obligations due hereunder are partially paid or discharged through bankruptcy, or otherwise, as to any one or more of the Invictus parties, this Agreement shall nevertheless remain in full force and effect as to the remaining Invictus parties, each of whom shall remain liable for all remaining Settlement Payments and obligations guaranteed hereby, even though any rights which the remaining Invictus parties may have against the discharged Invictus parties may be destroyed or diminished.

11. Reinstatement of Obligations. In the event that any of the Dugan parties becomes subject to a preference, fraudulent transfer, or other disgorgement action of any type, whether through a bankruptcy case or otherwise, in connection with the Settlement Payments, the Dugan parties shall be entitled to pursue collection of the entire Investments, Gains and other damages, costs and expenses arising therefrom (specifically including the possibility that the Dugan parties may choose to file the Consent Order) and may additionally assert the full amount of any disgorged payment or transfer, if any; provided, however, that the amount of any disgorged payment or transfer shall not be duplicated in the calculation of the Dugan parties' claim. To the full extent allowed by law, each of the Invictus parties waives its right to oppose any action initiated by the Dugan parties for the collection of the Investments and Gains as described herein. For the avoidance of doubt, the Dugan parties' claim in such action shall not be limited by any amounts described in this Agreement. Each of the Invictus parties acknowledge and agree that the Dugan parties shall be entitled to file a proof of claim in the applicable bankruptcy case or other

proceeding, if any, for the entire unpaid Investments and Gains, to which proof of claim the Invictus parties waive any and all objections.

12. Waiver by Obligors. Each of the Invictus parties hereby indvidiually agrees that he/she/it (as appropriate) is not now contemplating or planning to file a voluntary bankruptcy petition under the United States Bankruptcy Code (the "Bankruptcy Code") or otherwise become the subject of an order for relief under the Bankruptcy Code. Each of the Invictus parties agrees that he/she/it (as appropriate) shall not do so until on or after the date following ninety-five (95) days after the delivery of the Final Payment.

Each of the Invictus parties covenants and agrees that, upon the commencement of a bankruptcy proceeding by or against any one or more of the Invictus parties, that no Invictus party shall seek or cause the bankrupt debtor or any other person or entity to seek a supplemental stay or other relief, whether injunctive or otherwise, pursuant to 11 U.S.C. §105 or any other provision of chapter of Title 11 of the United States Code , as amended, (the "Bankruptcy Code") or any other debtor relief law, (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of the Dugan parties to enforce any rights of the Dugan parties against the remaining Invictus parties or the collateral secured hereby. The Dugan parties shall be entitled to relief from any automatic stay imposed by Section 362 of the Bankruptcy Code or from any injunction or comparable order against the exercise of the collection remedies available to the Dugan parties, and the Invictus parties hereby irrevocably consent to and waive its/her/his right to object to or oppose the Dugan parties' request or motion for relief from stay or other order or relief to allow the Dugan parties to pursue its/her/his collection remedies against the Advance Real Property, the Personal Property, and as otherwise provided by law.

13. Entire Agreement. This Agreement constitutes the whole and entire agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, with respect to the subject matter hereof.

14. Voluntary Agreement and Release. Each Party to this Agreement acknowledges and agrees that: (a) the Party is represented by or has had an opportunity to consult with counsel of its own choice before executing this Agreement; (b) the Party has read and understands the content of this Agreement; (c) the Party intends to be legally bound by this Agreement; (d) the Party is signing this Agreement voluntarily and of its own free will and without coercion, and with the benefit of advice of counsel; and (e) the Party is satisfied with the provisions of this Agreement.

15. General Representations and Warranties of the Parties. In order to induce each other Party to enter into this Agreement and the Consent Judgment (the "Closing Documents") to which it/he/she is a party, each Party represents and warrants that:

a. Power and Authority. Each such Party has the power, authority and/or legal capacity to enter into this Agreement and the other Closing Documents to which such Party is a party and to do all acts and things as are required or contemplated hereunder or thereunder to be done, observed and performed by such Party.

b. Enforceable Obligations. This Agreement and the other Closing Documents to which such Party is a party have been duly authorized, validly executed and delivered by one or more authorized officers, managers or members of each Party that is an entity, and constitute the legal, valid and binding obligations of each Party, enforceable against it in accordance with its and their respective terms.

c. Approvals; No Conflict. The execution and delivery of this Agreement and the other Closing Documents to which such Party is a party, and the performance of such Party hereunder and thereunder, do not and will not require the consent or approval of any regulatory authority or governmental authority or agency having jurisdiction over such Party, and are not and will not be in contravention of or in conflict with the organizational documents of any Party that is an entity, or the provisions of any statute, or any judgment, order or indenture, instrument, agreement or undertaking, to which such Party is a party or by which the assets or properties of such Party are bound.

d. No Assignment. Each Party (a) has not assigned, encumbered, or in any manner transferred all or any portion of the claims released in and covered by this Agreement to any other individual or entity, except as set forth in this Agreement; and (b) no other person, party, corporation, or entity has any right, title, or interest in any of the claims released in and covered by this Agreement.

e. Legal Compliance. Each such Party is in compliance in all material respects with all federal, state and local laws, rules and regulations applicable to such Party's properties, operations, businesses and finances. Each such Party is not a debtor under any chapter of Title 11 of the United States Code (the "Bankruptcy Code"), is not subject to any other proceeding for protection, reorganization, liquidation, dissolution or similar relief for debtors under any local, state or other insolvency laws, and has no present intention to seek relief, protection, reorganization, liquidation, dissolution or similar relief for debtors under the Bankruptcy Code or otherwise. Neither the execution and delivery of this Agreement and the other Closing Documents, nor the performance of any actions required hereunder or thereunder, is being consummated or undertaken by such Party to hinder, delay or defraud any entity or person to which such Party was, is now or will hereafter become indebted.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective predecessors, successors, affiliates, heirs, assigns, beneficiaries, transferees, executors, insurers, and personal representatives.

17. Collective Authorship. The Parties to this Agreement agree that this Agreement shall be construed in all respects as jointly drafted, and, in the event of any dispute arising out of this Agreement, no Party will have any right to argue any rule of construction or interpretation against any other Party claiming the benefit or detriment of being a draftsperson.

18. Amendment. The Parties agree that this Agreement may not be altered, modified, or amended, except by an agreement in writing duly executed by the Parties to be bound by and seeking to enforce the amendment.

19. Section Headings. The sections and headings used herein are for reference purposes only and shall not in any way alter or amend the meaning or interpretation of this Agreement.

20. No Admission of Liability. It is understood and agreed that this Agreement is a compromise of disputed claims and that the payments contemplated hereunder are not to be construed as an admission of liability, fault or wrongdoing on the part of any Party. The Parties affirmatively deny any and all liability, fault or wrongdoing. It is further agreed that this Agreement shall not be offered as evidence in any judicial, administrative, or other proceeding for the purpose of proving any such liability or otherwise, except that this Agreement may be introduced in any proceeding for the sole purpose of enforcing its terms. Notwithstanding the foregoing, nothing within this paragraph 20 shall be construed to limit the Dugan parties' right to file the Consent Order in accordance with the terms of this Agreement or to limit, in any way, the validity and/or enforceability of the Consent Order.

21. Attorney's Fees, Costs, and Expenses. All Parties to this Agreement shall be responsible for their own attorney's fees, costs, and expenses related in any way to the disputes giving rise to the Aggie Lawsuit and the Federal Lawsuit and the prosecution and defense of the Aggie Lawsuit and the Federal Lawsuit. In the event that there is a breach of this Agreement, the non-breaching party shall be entitled to recover its costs and reasonable attorney's fees arising out of the breach from the non-breaching party.

22. Severability. If any of the provisions set forth in this Agreement is held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein.

23. Counterparts. This Agreement may be executed in two or more separate counterparts, and conveyed electronically or by facsimile, each of which, when executed, shall be an original, and all of which together shall constitute one and the same version of the Agreement, notwithstanding that all Parties may not have executed the same counterpart, and each party may execute a separate signature page which may be appended to form one or more duplicate originals of this Agreement.

24. Governing Law. This Agreement shall be construed pursuant to and governed by the laws of the State of North Carolina, without regard to the conflict of laws principles thereof.

25. Time is of the Essence. Time is of the essence with respect to this Agreement.

IN WITNESS WHEREOF the Parties hereto, intending to be legally bound, subject to the condition set forth herein, have executed this Agreement, or caused it to be executed by a duly authorized representative.

AGGIE INVESTMENT, LLC

By: Guy Dugan

Print name: Guy Dugan

Its: Manager

Date: 3/9/16

Guy Dugan

Guy M. Dugan

Date: 3/9/16

Karen Dugan

Karen Dugan

Date: 3/9/16

GDM Family Trust

By:____________________

Print name:____________________

Its:____________________

Date:____________________

____

David W. Schamens

Date:____________________

____

Piliana M. Schamens

Date:____________________

INVICTUS CAPITAL GROWTH AND INCOME FUND, LLP

AGGIE INVESTMENT, LLC

By:______________________________

Print name:________________________

Its:_______________________________

Date:_____________________________

____

Guy M. Dugan

Date:_____________________________

____

Karen Dugan

Date:_____________________________

GDM Family Trust

By: Mark S. Dugan, Trustee

Print name: MARK S. DUGAN, TRUSTEE

Its: TRUSTEE

Date: 3/9/16

____

David W. Schamens

Date:_____________________________

____

Piliana M. Schamens

Date:_____________________________

INVICTUS CAPITAL GROWTH AND INCOME FUND, LLP

AGGIE INVESTMENT, LLC

By:______________________________

Print name:________________________

Its:______________________________

Date:_____________________________

____

Guy M. Dugan

Date:______________________________

____

Karen Dugan

Date:_______________________________

GDM Family Trust

By:______________________________

Print name:_________________________

Its:_______________________________

Date:_____________________________

____

David W. Schamens

Date: March 9, 2016

____

Piljana M. Schamens

Date: March 9, 2016

INVICTUS CAPITAL GROWTH AND INCOME FUND, LLP

By:______________________________

Print name: Piliana M. Schamens

Its: Registered Agent

Date: March 9, 2016

INVICTUS ASSET MANAGEMENT, LLC

By:______________________________

Print name: Piliana M. Schamens

Its: Former Member

Date: March 9, 2016

INVICTUS INCOME FUND, LLP

By:______________________________

Print name: Piliana M. Schamens

Its: Registered Agent

Date: March 9, 2016

INVICTUS REAL ESTATE INVESTMENT, LLP

By:______________________________

Print name: David W. Schamens

Its: General Partner

Date: March 9, 2016

INVICTUS FUNDS, LLC

By: ______________________________

Print name: David W. Schamens

Its: Member

Date: March 9, 2016

TRADEDESK FINANCIAL GROUP, INC.

By: ______________________________

Print name: David W. Schamens

Its: Director

Date: March 9, 2016

TRADEDESK FINANCIAL CORP.

By: ______________________________

Print name: Liliana M. Schamens

Its: Former Director

Date: March 9, 2016

TRADESTREAM ANALYTICS, LTD.

By: ______________________________

Print name: David W. Schamens

Its: Director

Date: March 9, 2016

INVICTUS CAPITAL GROWTH FUND, LLP

By: ____________________

Print name: Pihana M. Schamens

Its: Registered Agent

Date: March 9, 2016

INVICTUS HOLDINGS, LLP

By: ____________________

Print name: Pihana M. Schamens

Its: Registered Agent

Date: March 9, 2016

TRADEDESK CAPITAL, LLC

By: ____________________

Print name: David W. Schamens

Its: Director of Manager

Date: March 9, 2016

Exhibit B

Bank of America Business Online Banking — Tradedesk Financial Grou

Accounts | Bill Pay | Transfers | Business Services | Special Offers & Deals | Tools & Investing | Op

Send money to/from other banks, or to someone else using an account n

Make Transfer | Transfer Activity | Add Account/Recipient | Manage Accounts/Recip

Transfer status: Complete
Confirmation Number: 20160408B6B7HU2R011974

Transfer Accounts

Accounts

From: Business Advantage Chk - 2714

To: Hamilton Stephens Steele & Martin (NewBridge Bank)

Transfer Details

Send amount

Send amount: $75,000.00

Additional fee: $30.00

Transfer description

FBO Aggie settlement att Mark Kutny

Transfer dates

Frequency: One time only

Delivery speed: Same Day

Start on date: 04/08/2016

Estimated delivery date: 04/08/2016
Note: The receiving bank may make funds available later than this.

Send email to recipient

Dave

David W. Schamens
CEO, Managing Director, TradeStream Analytics, Ltd.
dschamens@tradestreamanalytics.com

Exhibit C

CONRAD TROSCH & KEMMY, P.A.

T.C. Conrad (1903-1995)
Louis A. Trosch
Michael J. Kemmy
William C. Trosch
Minette C. Trosch
Eric C. Trosch
Andrew Rheingrover
Casey N. Ferri*
Traci Belk*

Main Office
SouthPark

Suite 405
Park View Bldg
5821 Fairview Road
Charlotte, NC 28209
Phone (704) 553-8221
Fax (704) 553-7689

Litigation Office
Downtown

Suite 809
Cameron Brown Bldg
301 S. McDowell Street
Charlotte, NC 28204
Phone (704) 553-8221
Fax (704) 331-0595

*Also admitted in SC

June 9, 2017

Via E-Mail and Fax

Mark R. Kutny
Hamilton, Stephens, Steele & Martin
201 South College St. Suite 2020
Charlotte, NC 28244
Fax: 704-344-1483
E-Mail: mkutny@lawhssm.com

Re: *Aggie Investments, LLC v. Schamens, et al*

Dear Mark:

I am writing on behalf of Mr. Schamens and the corporate defendants in the *Aggie Investments, LLC v. Schamens, et al* case in Mecklenburg County, North Carolina Superior Court.

In court on June 2, 2016, you admitted to the Court that you had $75,000.00 in your trust account that had been wired to you by my clients. You also argued to the Court that your receipt of the funds did not constitute acceptance of the funds by your client.

If the funds were/are not your clients' funds, then whose money is it? Who are you holding it on behalf of? I believe that you are holding the funds so that when/if your client has a right to collect against the funds, the funds will be available for your client to collect after a judgment is entered by the Court. If you believe the Settlement Agreement was materially breached and is not in force, then under what right do you hold the funds now? Whose money is it?

You are clearly either holding $75,000.00 of your clients' money pursuant to the Settlement Agreement or $75,000.00 of my clients' money. If you are holding the funds on behalf of your client, then please take actions to correct the statements you told the Court on June 2, 2016. Tell the Court that you actually accepted the payment funds on behalf of your client and that the funds are your clients' funds (See Rule 3.3 NC Rules of Professional Conduct). If you are not holding the funds on behalf of your clients, then the funds are my clients' money and must be returned to my clients immediately.

Comment 11 of the NC Rules of Professional Conduct states "[w]hen a lawyer is entrusted with property belonging to others and does not comply with these rules, the burden of proof is on the lawyer to establish the capacity in which the lawyer holds the funds and to demonstrate why these rules should not apply." You have funds belonging to others and have the burden of proof to "establish the capacity in which [you hold] the funds."

I repeat to you what I said on June 2, 2016 (and many times prior to that date): return my clients' funds. If you do not return the funds, then correct your statement to the

Court immediately. You should return the funds to my firm's trust account (wiring instructions are attached). In addition, please prove the capacity in which you have held the funds from the time you received them until now.

Thank you for your consideration of this matter.

Sincerely yours,

William C. Trosch

Enclosure

cc: David Schamens

Exhibit D

BankofAmerica Business Online Banking Tradedesk Financial Grou

Accounts | Bill Pay | Transfers | Business Services | Special Offers & Deals | Tools & Investing | Op

Send money to/from other banks, or to someone else using an account n

Make Transfer **Transfer Activity** **Add Account/Recipient** **Manage Accounts/Recipi**

Transfer status: In Process
Order Number: 177534040

Transfer Accounts

Accounts

From: Business Advantage Chk - 2714 ;

To: Conrad Trosch Kemmy PA Trust Acct (Bank of America)

Transfer Details

Send amount

Send amount: $140,000.00

Additional fee: $30.00

Transfer description

FBO Tradedesk Financial Group settlement

Transfer dates

Frequency: One time only

Delivery speed: Same Day

Start on date: 07/15/2016

Estimated delivery date: 07/15/2016
Note:The receiving bank may make funds available later than this.

Send email to recipient

Email to: troschbill@ctklawyers.com

Email from: dschamens@tradestreamanalytics.com

Subject: Money Transfer from TRADEDESK FINANCIAL GROUP, INC.

Message: Hi, $140000 is being transferred electronically to your account at Bank of America. Contact m

Exhibit E

NORTH CAROLINA
MECKLENBURG COUNTY

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

THIS CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE (hereinafter, "Agreement") is made and entered into on October 24th, 2016, by and between AGGIE INVESTMENT, LLC ("Aggie"), Guy M. Dugan ("Mr. Dugan"), Karen Dugan ("Mrs. Dugan"), the GDM Family Trust (the "Trust") and Suburban Lung Associates FBO Guy M. Dugan ("Sub-Lung") (collectively, the "Dugan" parties or the "Dugans"), on the one hand, and David W. Schamens ("Schamens"), Piliana M. Schamens ("P. Schamens"), INVICTUS CAPITAL GROWTH AND INCOME FUND, LLP ("ICG&IF"), INVICTUS ASSET MANAGEMENT, LLC ("IAM"), INVICTUS INCOME FUND, LLP ("IIF"), INVICTUS REAL ESTATE INVESTMENT, LLP ("IREI"), INVICTUS FUNDS, LLC ("IF"), TRADEDESK FINANCIAL GROUP, INC. ("TFG"), TRADEDESK FINANCIAL CORP. ("TFC"), TRADESTREAM ANALYTICS, LTD. ("TA"), INVICTUS CAPITAL GROWTH FUND, LLP ("ICGF"), INVICTUS HOLDINGS, LLP ("IH"), and TRADEDESK CAPITAL, LLC ("TC") (collectively, the "Invictus" parties or "Invictus"), on the other hand, (Invictus and the Dugans are jointly referred to herein as the "Parties").

RECITALS

WHEREAS, the Dugans have alleged beginning in 2003 and continuing for a number of years, the Dugans invested a total of approximately $1,200,000.00 with Invictus through various funds, common stock and debentures of the Invictus Parties (the "Investments");

WHEREAS, the Dugan have alleged the most recent account statements and representations made to the Dugans from some of the Invictus parties disclose gains of approximately $750,000.00 on the Investments (the "Gains");

WHEREAS, the Dugans have alleged the Dugans requested in November 2012 that the Invictus parties liquidate the Investments and Gains and forward the proceeds to the Dugans;

WHEREAS, the Dugans have alleged the Invictus parties have not liquidated the Investments and Gains as requested and have not forwarded the proceeds to the Dugans;

WHEREAS, on December 12, 2014, Aggie filed a lawsuit in Mecklenburg County Superior Court, Case No. 14-CVS-22820, against some of the Invictus parties alleging claims for Fraudulent Inducement, Fraud, Breach of Fiduciary Duty, Constructive Fraud, Conversion, Unfair and Deceptive Trade Practices, Piercing of the Corporate Veil, Civil Conspiracy, Accounting, Unjust Enrichment, and Constructive Trust (the "Aggie Lawsuit");

WHEREAS, Aggie obtained a Default Judgment in the Aggie Lawsuit on June 17, 2016 in the amount of $570,179.69 exclusive of interest, which Default Judgment was effective as of December 16, 2014, the date of filing of a Notice of Lis Pendens in Davie County, North Carolina and imposes a constructive trust on the real property located at 138 Arnold Palmer Drive, Advance, North Carolina (the "Aggie Lawsuit Default Judgment");

WHEREAS, on or about August 14, 2015, Mr. and Mrs. Dugan and the Trust brought a federal court lawsuit in the Western District of North Carolina, Case No. 3:15-cv-366-RJC-DSC alleging similar claims as in the Aggie Lawsuit (the "Federal Lawsuit");

WHEREAS, an Entry of Default was entered against the Invictus Parties in the Federal Lawsuit on or about March 7, 2016 (the "Entry of Default");

WHEREAS, Invictus has generally denied the allegations of the Aggie Lawsuit and the Federal Lawsuit; and

WHEREAS, the Dugans, on the one hand, and the Invictus parties, on the other, desire to fully and finally resolve any and all disputes between them related to the Investments, the Gains, the Aggie Lawsuit, and the Federal Lawsuit.

NOW, THEREFORE, for and in consideration of the covenants and undertakings set forth herein, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Payment. The settlement amount of Three Hundred Seventy Five Thousand Dollars and NO/100 (**$375,000.00**) shall be paid by the Invictus parties, jointly and severally, as follows (collectively, the "Settlement Payments" and each installment payment thereof, a "Settlement Payment"):

a. An initial payment in the amount of Seventy-Five Thousand Dollars and NO/100 ($75,000.00) shall be made contemporaneously with the full execution of this Agreement and the documents referenced herein (the "First Payment");

b. A second payment in the amount of Fifty Thousand Dollars and NO/100 ($50,000.00) shall be made within ninety five (95) days of the full execution of this Agreement (the "Second Payment");

c. A third payment in the amount of Fifty Thousand Dollars and NO/100 ($50,000.00) shall be made within one hundred twenty five (125) days of the full execution of this Agreement (the "Third Payment");

d. A fourth payment in the amount of Fifty Thousand Dollars and NO/100 ($50,000.00) shall be made within one hundred fifty five (155) days of the full execution of this Agreement (the "Fourth Payment");

e. A fifth payment in the amount of Fifty Thousand Dollars and NO/100 ($50,000.00) shall be made within one hundred eighty five (185) days of the full execution of this Agreement (the "Fifth Payment");

f. A sixth payment in the amount of Fifty Thousand Dollars and NO/100 ($50,000.00) shall be made within two hundred fifteen (215) days of the full execution of this Agreement (the "Sixth Payment"); and

g. A final payment in the amount of Fifty Thousand Dollars and NO/100 ($50,000.00) shall be made within two hundred forty five (245) days of the full execution of this Agreement (the "Seventh Payment").

2. Delivery of Payments. All payments shall be delivered to counsel for the Dugan parties by wire transfer to the **Hamilton Stephens Steele + Martin PLLC Trust Account.** Wire instructions will be separately provided to counsel for the Invictus Parties. **Time is of the essence in relation to all payments due pursuant to this Agreement.**

3. Promissory Note and Deed of Trust. The Invictus parties' joint and several obligations to make the Settlement Payments to the Dugan parties and abide by the terms of this agreement shall be secured by a Promissory Note in the amount of $570,179.69 from the Invictus parties ("Promissory Note") and a Deed of Trust on the real property located at 138 Arnold Palmer Drive, Advance, North Carolina, from Schamens, P. Schamens and IREI ("Deed of Trust"), the forms of which are attached hereto as Exhibits A and B and incorporated herein by reference. The Promissory Note and Deed of Trust shall be executed and delivered contemporaneously with the execution of this Agreement. The Parties agree that, as a mandatory condition of this Agreement, the Deed of Trust shall be a first lien Deed of Trust on the real property located at 138 Arnold Palmer Drive, Advance, North Carolina, and shall be insurable as a first priority and an enforceable lien under a mortgagee title policy. The Dugan parties shall be responsible for the cost of the mortgagee title policy. The Invictus parties shall deliver an owner's affidavit regarding liens and any other document required by the Dugan parties' title company. After all of the Settlement Payments (First Payment through the Seventh Payment) have been made timely and in full, the Promissory Note will be returned to counsel for the Invictus parties and the Deed of Trust shall be cancelled. If any of the Settlement Payments are not timely made, the Dugan parties shall be allowed to foreclose the Deed of Trust lien on the real property located at 138 Arnold Palmer Drive, Advance, North Carolina and/or enforce the Promissory Note, solely in the discretion of the Dugan parties. For any Settlement Payments received prior to foreclosure (or other enforcement), the Invictus parties shall receive a dollar-for-dollar credit against the principal amount of the Promissory Note and the accrued interest owing thereunder (with the credit to be applied first against the accrued interest). As a condition of the Deed of Trust being a first lien Deed of Trust on the real property located at 138 Arnold Palmer Drive, Advance, North Carolina, all past due real property taxes and taxes for 2016 must be paid by the Invictus parties prior to the delivery of the Deed of Trust and this Agreement to the Dugan parties, with proof of payment in full.

4. Conditions for Dismissal of the Aggie Lawsuit and the Federal Lawsuit. The following conditions all must occur for the cancellation of the Default Judgment and the Dismissal of the Aggie Lawsuit and the Federal Lawsuit: 1) The Dugan parties are not subject to a preference, fraudulent transfer, or other disgorgement action of any type, whether through a bankruptcy case or otherwise, in connection with the Settlement Payments and/or the delivery of the Promissory Note and Deed of Trust; 2) none of the Invictus parties has filed a voluntary bankruptcy petition under the United States Bankruptcy Code (the "Bankruptcy Code"), is the subject of an involuntary bankruptcy under the Bankruptcy Code, or has otherwise become the subject of an order for relief under the Bankruptcy Code; 3) the Invictus parties have made the Second Payment in the amount of $50,000.00; 4) the Deed of Trust is a first priority and an enforceable lien on the real property located at 138 Arnold Palmer Drive, Advance, North Carolina; and 5) none of the Invictus parties are in breach of this Agreement. If the above conditions are met, then after ninety five (95) days from the Aggie parties' receipt of the First Payment in the amount of Seventy-Five Thousand

Dollars and NO/100 ($75,000.00) and the Promissory Note and Deed of Trust, the parties shall, in the Aggie Lawsuit, present to the Court at its next available hearing date a Consent Order setting aside the Aggie Lawsuit Default Judgment. The Parties shall execute a Stipulation of Dismissal with prejudice in both the Aggie Lawsuit and the Federal Lawsuit, providing that each Party shall bear its own costs and attorneys' fees. The Consent Order and the Stipulations of Dismissal shall be executed with this Agreement and held in trust by an attorney to be mutually agreed upon by counsel for the Parties. The Consent Order and the Stipulations of Dismissal shall not be released from trust unless all of the conditions set forth in this paragraph have been met.

5. Cooperation with Regard to the Aggie Lawsuit and the Federal Lawsuit. After receipt of a fully executed copy of this Agreement, the First Payment, the Promissory Note and the Deed of Trust, the Parties shall notify the United States District Court for the Western District of North Carolina that they have settled the Federal Lawsuit contingent upon the terms of this Agreement being fulfilled by the Invictus Parties, and that if the terms are fully consummated, a Stipulation of Dismissal will be filed within ninety five (95) days. The Parties shall cooperate in securing an extension of time to file the Record on Appeal in the Aggie Lawsuit until after ninety five (95) days from the receipt of the fully executed Agreement, the First Payment, the Promissory Note and the Deed of Trust.

6. Cooperation with Regard to Notices of Service by Publication. The Parties will cooperate and use their best efforts to request that the Notices of Service by Publication for the Aggie Lawsuit be removed from the public record, if possible. Counsel for the Invictus parties shall be responsible for contacting the Mecklenburg Times to obtain the procedure for removing these notices, and counsel for the Dugan parties shall cooperate in carrying out that procedure, if any.

7. Indemnification. The Invictus parties, jointly and severally, covenant and agree to fully indemnify and hold harmless the Dugan parties for any and all claims, demands, actions, and causes of action whatsoever made against the Dugan parties, including, without limitation, those for damages (whether direct, indirect, nominal, consequential, special and/or incidental), disgorgement, attorneys' fees, costs and expenses, of every kind and nature whatsoever, that relate in any manner to the Invictus parties, including, without limitation, their business, the Dugan parties' ownership of any interest in the Invictus parties, this Agreement, and any dealings whatsoever between the Dugan parties and the Invictus parties, whenever such claims may be asserted.

8. Release. In consideration of the mutual promises and covenants set forth herein (the sufficiency of which is hereby acknowledged), effective on the ninety-fifth (95) day if the Settlement Payments have been made timely, in full, and are not subject to any claim or disgorgement of any kind by any party, and if none of the Invictus parties has filed a voluntary bankruptcy petition under the United States Bankruptcy Code (the "Bankruptcy Code"), is the subject of an involuntary bankruptcy proceeding or is otherwise the subject of an order for relief under the Bankruptcy Code., then the Dugan parties hereby release the Invictus parties and their representatives, heirs, successors, assigns, and attorneys (but not including Phillips Wiegand, Jr.) from all claims, liabilities, suits, damages, amounts owed, and causes of action of any kind whatsoever, including claims for attorneys' fees, consequential damages, extra-contractual

damages, and any other actual, alleged or perceived costs, damages or expenses of any nature whatsoever arising from all events (known or unknown, liquidated or unliquidated) prior to the date of the execution of this Agreement including, without limitation, those related to the facts and allegations set forth in the pleadings in the Aggie Lawsuit and/or the Federal Lawsuit and/or any claim to the stock of Tradedesk Financial Group, Inc.

In consideration of the mutual promises and covenants set forth herein (the sufficiency of which is hereby acknowledged), and effective upon execution of this agreement in full, the Invictus parties hereby release the Dugan parties and their representatives, heirs, successors, assigns, and attorneys from all claims, liabilities, suits, damages, amounts owed, and causes of action of any kind whatsoever, including claims for attorneys' fees, consequential damages, extra-contractual damages, and any other actual, alleged or perceived costs, damages or expenses of any nature whatsoever arising from all events (known or unknown, liquidated or unliquidated) prior to the date of the execution of this Agreement including, without limitation, those related to the facts and allegations set forth in the pleadings in the Aggie Lawsuit and/or the Federal Lawsuit.

All Parties represent and warrant that there has been no assignment or other transfer of any interest in any claims or potential claims that are covered by the above releases.

9. Confidentiality. The Parties to this Agreement agree to the keep the terms hereof strictly confidential, except that the Parties may disclose the terms hereof to their counsel, accountants and other advisors to the extent necessary to comply with their respective legal obligations. The Parties may further disclose the terms of this Agreement to the extent necessary to enforce this Agreement and in response to proper legal process.

10. Guaranty of Payment and Performance. If the Settlement Payments and obligations due hereunder are partially paid or discharged through bankruptcy, or otherwise, as to any one or more of the Invictus parties, this Agreement shall nevertheless remain in full force and effect as to the remaining Invictus parties, each of whom shall remain liable for all remaining Settlement Payments and obligations guaranteed hereby, even though any rights which the remaining Invictus parties may have against the discharged Invictus parties may be destroyed or diminished.

11. Reinstatement of Obligations. In addition to any other remedies, in the Dugan parties' sole discretion, in the event that any of the Dugan parties becomes subject to a preference, fraudulent transfer, or other disgorgement action of any type, whether through a bankruptcy case or otherwise, in connection with this Agreement, the Settlement Payments, the Promissory Note, and/or the Deed of Trust, the Dugan parties shall be entitled to pursue collection of the entire Investments, Gains and other damages, costs and expenses arising therefrom (specifically including the possibility that the Dugan parties may choose to file the Consent Order) and may additionally assert the full amount of any disgorged payment or transfer, if any; provided, however, that the amount of any disgorged payment or transfer shall not be duplicated in the calculation of the Dugan parties' claim. To the full extent allowed by law, each of the Invictus parties waives its right to oppose any action initiated by the Dugan parties for the collection of the Investments and Gains as described herein. For the avoidance of doubt, the Dugan parties' claim in such action shall not be limited by any amounts described in this Agreement. Each of the Invictus parties

acknowledge and agree that the Dugan parties shall be entitled to file a proof of claim in the applicable bankruptcy case or other proceeding, if any, for the entire unpaid Investments and Gains, to which proof of claim the Invictus parties waive any and all objections.

12. Waiver by Obligors. Each of the Invictus parties hereby individually agrees that he/she/it (as appropriate) is not now contemplating or planning to file a voluntary bankruptcy petition under the United States Bankruptcy Code (the "Bankruptcy Code") or otherwise become the subject of an order for relief under the Bankruptcy Code. Each of the Invictus parties agrees that he/she/it (as appropriate) shall not do so until on or after the date following ninety-five (95) days after the delivery of the Seventh Payment.

Each of the Invictus parties covenants and agrees that, upon the commencement of a bankruptcy proceeding by or against any one or more of the Invictus parties, that no Invictus party shall seek or cause the bankrupt debtor or any other person or entity to seek a supplemental stay or other relief, whether injunctive or otherwise, pursuant to 11 U.S.C. §105 or any other provision of chapter of Title 11 of the United States Code, as amended, (the "Bankruptcy Code") or any other debtor relief law, (whether statutory, common law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of the Dugan parties to enforce any rights of the Dugan parties against the remaining Invictus parties, including any security interest. The Dugan parties shall be entitled to relief from any automatic stay imposed by Section 362 of the Bankruptcy Code or from any injunction or comparable order against the exercise of the collection remedies available to the Dugan parties, and the Invictus parties hereby irrevocably consent to and waive its/her/his right to object to or oppose the Dugan parties' request or motion for relief from stay or other order or relief to allow the Dugan parties to pursue its/her/his collection remedies against the Advance Real Property, the Personal Property, and as otherwise provided by law.

13. Entire Agreement. This Agreement constitutes the whole and entire agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, with respect to the subject matter hereof.

14. Voluntary Agreement and Release. Each Party to this Agreement acknowledges and agrees that: (a) the Party is represented by or has had an opportunity to consult with counsel of its own choice before executing this Agreement; (b) the Party has read and understands the content of this Agreement; (c) the Party intends to be legally bound by this Agreement; (d) the Party is signing this Agreement voluntarily and of its own free will and without coercion, and with the benefit of advice of counsel; and (e) the Party is satisfied with the provisions of this Agreement.

15. General Representations and Warranties of the Parties. In order to induce each other Party to enter into this Agreement and the Promissory Note and Deed of Trust (the "Closing Documents") to which it/he/she is a party, each Party represents and warrants that:

a. Power and Authority. Each such Party has the power, authority and/or legal capacity to enter into this Agreement and the other Closing Documents to which such Party is a party and to do all acts and things as are required or contemplated hereunder or thereunder to be done, observed and performed by such Party.

b. Enforceable Obligations. This Agreement and the other Closing Documents to which such Party is a party have been duly authorized, validly executed and delivered by one or more authorized officers, managers or members of each Party that is an entity, and constitute the legal, valid and binding obligations of each Party, enforceable against it in accordance with its and their respective terms.

c. Approvals; No Conflict. The execution and delivery of this Agreement and the other Closing Documents to which such Party is a party, and the performance of such Party hereunder and thereunder, do not and will not require the consent or approval of any regulatory authority or governmental authority or agency having jurisdiction over such Party, and are not and will not be in contravention of or in conflict with the organizational documents of any Party that is an entity, or the provisions of any statute, or any judgment, order or indenture, instrument, agreement or undertaking, to which such Party is a party or by which the assets or properties of such Party are bound.

d. No Assignment. Each Party (a) has not assigned, encumbered, or in any manner transferred all or any portion of the claims released in and covered by this Agreement to any other individual or entity, except as set forth in this Agreement; and (b) no other person, party, corporation, or entity has any right, title, or interest in any of the claims released in and covered by this Agreement.

e. Legal Compliance. Each such Party is in compliance in all material respects with all federal, state and local laws, rules and regulations applicable to such Party's properties, operations, businesses and finances. Each such Party is not a debtor under any chapter of Title 11 of the United States Code (the "Bankruptcy Code"), is not subject to any other proceeding for protection, reorganization, liquidation, dissolution or similar relief for debtors under any local, state or other insolvency laws, and has no present intention to seek relief, protection, reorganization, liquidation, dissolution or similar relief for debtors under the Bankruptcy Code or otherwise. Neither the execution and delivery of this Agreement and the other Closing Documents, nor the performance of any actions required hereunder or thereunder, is being consummated or undertaken by such Party to hinder, delay or defraud any entity or person to which such Party was, is now or will hereafter become indebted.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective predecessors, successors, affiliates, heirs, assigns, beneficiaries, transferees, executors, insurers, and personal representatives.

17. Collective Authorship. The Parties to this Agreement agree that this Agreement shall be construed in all respects as jointly drafted, and, in the event of any dispute arising out of this Agreement, no Party will have any right to argue any rule of construction or interpretation against any other Party claiming the benefit or detriment of being a draftsperson.

18. Amendment. The Parties agree that this Agreement may not be altered, modified, or amended, except by an agreement in writing duly executed by the Parties to be bound by and seeking to enforce the amendment.

19. Section Headings. The sections and headings used herein are for reference purposes only and shall not in any way alter or amend the meaning or interpretation of this Agreement.

20. No Admission of Liability. It is understood and agreed that this Agreement is a compromise of disputed claims and that the payments contemplated hereunder are not to be construed as an admission of liability, fault or wrongdoing on the part of any Party. The Parties affirmatively deny any and all liability, fault or wrongdoing. It is further agreed that this Agreement shall not be offered as evidence in any judicial, administrative, or other proceeding for the purpose of proving any such liability or otherwise, except that this Agreement may be introduced in any proceeding for the sole purpose of enforcing its terms. Notwithstanding the foregoing, nothing within this paragraph 20 shall be construed to limit the Dugan parties' right to enforce the Promissory Note and/or Deed of Trust in accordance with the terms of this Agreement or to limit, in any way, the validity and/or enforceability of the Promissory Note and/or the Deed of Trust.

21. Attorney's Fees, Costs, and Expenses. All Parties to this Agreement shall be responsible for their own attorney's fees, costs, and expenses related in any way to the disputes giving rise to the Aggie Lawsuit and the Federal Lawsuit and the prosecution and defense of the Aggie Lawsuit and the Federal Lawsuit. Notwithstanding the foregoing, in the event that there is a breach of this Agreement, the non-breaching party shall be entitled to recover its costs and reasonable attorney's fees arising out of the breach from the non-breaching party.

22. Severability. If any of the provisions set forth in this Agreement is held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein.

23. Counterparts. This Agreement may be executed in two or more separate counterparts, and conveyed electronically or by facsimile, each of which, when executed, shall be an original, and all of which together shall constitute one and the same version of the Agreement, notwithstanding that all Parties may not have executed the same counterpart, and each party may execute a separate signature page which may be appended to form one or more duplicate originals of this Agreement.

24. Governing Law. This Agreement shall be construed pursuant to and governed by the laws of the State of North Carolina, without regard to the conflict of laws principles thereof.

25. Time is of the Essence. Time is of the essence with respect to this Agreement.

26. Notice. The Invictus parties hereby appoint William Trosch as his/her/its/their agent for purposes of accepting any notices and service of process required in connection with this Agreement, the Promissory Note, the Deed of Trust or by applicable law. Any notices or service of process required in connection with these documents or by applicable law may be delivered to

William Trosch, Esq., Conrad, Trosch & Kemmy, P.A., Suite 809, Cameron Brown Building, 301 South McDowell Street, Charlotte, NC 28204, by hand delivery, certified mail, or overnight carrier and delivery of a notice or process in such matter shall be deemed valid delivery of such notice and valid service of process under these documents and applicable law, including, without limitation, Rule 4 of the North Carolina Rules of Civil Procedure and Chapter 45 of the North Carolina General Statutes.

27. Resolutions. In connection with the execution of this Agreement, each Invictus party entity shall deliver to the Dugan parties a resolution, properly authorized and executed, from each of the Invictus party entities authorizing the transactions contemplated in this Agreement, the Promissory Note, and Deed of Trust. In addition, the Invictus parties shall deliver a resolution from Pillar Capital Partners, properly authorized and executed, authorizing the execution of the Subordination Agreement, the form of which is attached hereto, so that the Deed of Trust shall be a first lien Deed of Trust on the real property located at 138 Arnold Palmer Drive, Advance, North Carolina, and shall be insurable as a first priority and an enforceable lien under a mortgagee title policy.

IN WITNESS WHEREOF the Parties hereto, intending to be legally bound, subject to the condition set forth herein, have executed this Agreement, or caused it to be executed by a duly authorized representative.

AGGIE INVESTMENT, LLC

By:__________________________

Print name:_____________________

Its:__________________________

Date:_________________________

____
Guy M. Dugan

Date:_________________________

GDM Family Trust

By:__________________________

Print name:_____________________

Its:__________________________

Date:_________________________

____
Karen Dugan

Date:_________________________

SUBURBAN LUNG ASSOCIATES
FBO GUY M. DUGAN

By:__________________________

Print Name:_____________________

Its:__________________________
Date:_________________________

David W. Schamens

Date: 10-24-16

Piliana M. Schamens

Date: 10-24-16

INVICTUS CAPITAL GROWTH AND INCOME FUND, LLP

By: ____________________

Print name: Piliana M. Schamens

Its: Former Managing Member of the General Partner, Invictus Asset Management, LLC

Date: October 24, 2016

INVICTUS ASSET MANAGEMENT, LLC

By: ____________________

Print name: Piliana M. Schamens

Its: Former Managing Member

Date: October 24, 2016

INVICTUS INCOME FUND, LLP

By: ____________________

Print name: Piliana M. Schamens

Its: Former Managing Member of the General Partner, Invictus Asset Management, LLC

Date: October 24, 2016

INVICTUS REAL ESTATE INVESTMENT, LLP

By: ____________________

Print name: David W. Schamens

Its: General Partner

Date: October 24, 2016

INVICTUS FUNDS, LLC

By: ____________________

Print name: David W. Schamens

Its: Managing Member

Date: October 24, 2016

TRADEDESK FINANCIAL GROUP, INC.

By: ____________________

Print name: David W. Schamens

Its: Managing Director

Date: October 24, 2016

TRADEDESK FINANCIAL CORP.

By: ____________________

Print name: Piliana M. Schamens

Its: Former Managing Director

Date: October 24, 2016

TRADESTREAM ANALYTICS, LTD.

By: ____________________

Print name: David W. Schamens

Its: Managing Director

Date: October 24, 2016

INVICTUS CAPITAL GROWTH FUND, LLP

By: ____________________

Print name: Pilana M. Schamens

Its: Former Managing Member of the General Partner, Invictus Asset Management, LLC

Date: October 24, 2016

INVICTUS HOLDINGS, LLP

By: ____________________

Print name: David W. Schamens

Its: Former Managing Member of the General Partner, Invictus Funds, LLC

Date: October 24, 2016

TRADEDESK CAPITAL, LLC

By: ____________________

Print name: David W. Schamens

Its: Managing Director of the Former General Partner, Tradedesk Financial Group, Inc.

Date: October 24, 2016

CHICAGO TITLE INSURANCE COMPANY
OWNER AFFIDAVIT AND INDEMNITY AGREEMENT
(NO RECENT IMPROVEMENTS AND NO EXECUTORY CONTRACTS FOR IMPROVEMENTS)

PARTIES: All parties identified in this section must execute this Agreement.

Owner: DAVID W. SCHAMENS and wife, PILIANA SCHAMENS; and INVICTUS REAL ESTATE INVESTMENT, LLP

(NOTE: A separate Agreement is required for each successive owner in the 120-Day Lien Period.)

PROPERTY: BEING KNOWN AND DESIGNATED as Lot 565 in Oak Valley, Section 9A, Palmer's Ridge of Oak Valley, according to the plat thereof recorded in Plat Book 7 at Page 69, in the Office of the Register of Deeds of Davie County, North Carolina.

(Insert street address or brief description and/or attach a description as Exhibit A. Include here any real estate that is a portion of a larger, previously unsegregated tract when that area is reasonably necessary for the convenient use and occupation of Improvements on the larger tract.)

DEFINITIONS: The following capitalized terms as used in this Agreement shall have the following meanings:

- Improvement: All or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, or landscaping, including trees and shrubbery, driveways, and private roadways on the Property as defined below.
- Labor, Services or Materials: ALL labor, services, materials for which a lien can be claimed under NCGS Chapter 44A, Article 2, including but not limited to professional design services (including architectural, engineering, landscaping and surveying) and/or rental equipment.
- Contractor: Any person or entity who has performed or furnished or has contracted to perform or furnish Labor, Services or Materials pursuant to a contract, either express or implied, with the Owner of real property for the making of an Improvement thereon. (Note that services by architects, engineers, landscapers, surveyors, furnishers of rental equipment and contracts for construction on Property of Improvements are often provided before there is visible evidence of construction.)
- 120-Day Lien Period: The 120 days immediately preceding the date of recordation of the latter of the deed to purchaser or deed of trust to lender in the Office of the Register of Deeds of the county in which the Property is located.
- Owner: Any person or entity, as defined in NCGS Chapter 44A, Article 2, who has or has had any interest in the Property within the 120-Day Lien Period. For the purposes of this Agreement, the term Owner includes: (i) a seller of the Property or a borrower under a loan agreement secured by the Property; (ii) a person with rights to purchase the Property under a contract and for whom an Improvement is made and who ordered the Improvement to be made; and (iii) the Owner's successors in interest and agents of the Owner acting within their authority.
- Company: The title insurance company providing the title policy for the transaction contemplated by the parties herein.
- Property: The real estate described above or on Exhibit A and any leaseholds, tenements, hereditaments, and improvements placed thereon.
- All defined terms shall include the singular or plural as required by context.

AGREEMENT: For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and as an inducement to the purchase of the Property by a purchaser and/or the making of a loan by a lender secured by a deed of trust encumbering the Property and the issuance of a title insurance policy or policies by Company insuring title to the Property without exception to liens for Labor, Services or Materials; Owner first being duly sworn, deposes, says and agrees:

1. **Certifications:** Owner certifies that at no time during the 120-Day Lien Period have any Labor, Services or Materials been furnished in connection with a contract, express or implied, for improvements to the Property (including architectural, engineering, landscaping or surveying services or materials or rental equipment for which a lien can be claimed under NCGS Chapter 44A) nor have any Labor, Services or Materials been furnished on the Property prior to the 120-Day Lien Period that will or may be completed after the date of this affidavit OR only minor repairs and/or alterations to pre-existing Improvements have been made and Owner certifies such repairs and/or alterations have been completed and those providing Labor, Services or Materials for the repairs have been paid in full. The Owner further certifies that no Mechanics Lien Agent has been appointed.

2. **Reliance and Indemnification:** This Agreement may be relied upon by the purchaser in the purchase of the Property, a lender to make a loan secured by a deed of trust encumbering the Property and by Company in issuance of a title insurance policy or policies insuring title to the Property without exception to matters certified in this Agreement. The provisions of this Agreement shall survive the disbursement of funds and closing of this transaction and shall be binding upon Owner and anyone claiming by, through or under Owner.

Owner agrees to indemnify and hold purchaser, lender, and Company harmless of and from any and all loss, cost, damage and expense of every kind, and attorney's fees, costs and expenses, which the purchaser, lender or Company shall or may incur or become liable for, directly or indirectly, as a result of reliance on the certifications of Owner made herein or in enforcement of the Company's rights hereunder.

3. **NCLTA Copyright and Entire Agreement:** This Agreement and any attachments hereto represent the entire agreement between the Owner and the Company, and no prior or contemporaneous agreement or understanding inconsistent herewith (whether oral or written) pertaining to such matters is effective.

THIS IS A COPYRIGHT FORM and any variances in the form provisions hereof must be specifically stated in the blank below and agreed to in writing by the Company.

There are no parties with rights to the Land pursuant to verbal leases or pursuant to recorded or unrecorded written leases.

No modification of this Agreement, and no waiver of any of its terms or conditions, shall be effective unless made in writing and approved by the Company.

[Signature appear on the following page]

PROVIDING A FALSE AFFIDAVIT IS A CRIMINAL OFFENSE

EXECUTION BY OWNER

INVICTUS REAL ESTATE INVESTMENT, LLP (SEAL) By: ______ Printed or Typed Name/Title: David W. Schamens, General Partner	State of North Carolina County of Forsyth Signed and sworn to (or affirmed) before me this day by David W. Schamens, General Partner [insert name(s) of principal(s)]. Date: October 27th, 2016 Brian Huffman, Notary Public My Commission Expires: June 17, 2019	(Affix Official/Notarial Seal) BRIAN HUFFMAN Notary Public - North Carolina Davidson County My Commission Expires June 17, 2019
David W. Schamens ______ Piliana Schamens	State of North Carolina County of Forsyth Signed and sworn to (or affirmed) before me this day by David W. Schamens Piliana Schamens [insert name(s) of principal(s)]. Date: October 27th, 2016 Brian Huffman, Notary Public My Commission Expires: June 17, 2019	(Affix Official/Notarial Seal) BRIAN HUFFMAN Notary Public - North Carolina Davidson County My Commission Expires June 17, 2019

CHICAGO TITLE INSURANCE COMPANY
INSTRUCTIONS FOR COMPLETION OF
OWNER AFFIDAVIT AND INDEMNITY AGREEMENT
(NO RECENT IMPROVEMENTS AND NO EXECUTORY CONTRACTS FOR IMPROVEMENTS)

1. This Owner Affidavit and Indemnity Agreement (the "Agreement") form is for use with any title insurer (the "Company") regarding owner and lender coverage for transactions affecting title to particular real estate in North Carolina (the "Property"), a description of which must be included in this Agreement, where there have been no Improvements made to the Property within the 120-Day Lien Period (as defined).

2. The closing attorney must *notify underwriting counsel for the Company prior to closing* regarding any filed Claim of Lien on Real Property or Notice of Claim of Lien upon Funds, or any Notice of Claim of Lien upon Funds known by the attorney or Owner to have been delivered to the Owner, whether on the Property or on *any* property in the state of North Carolina, as this may affect the Company's decisions about whether to insure and on what basis.

At the very least, any *filed* **Claim of Lien on Real Property** must be paid in full and canceled of record. Any *delivered or filed* **Notice of Claim of Lien upon Funds** (by a subcontractor) must be paid in full and a waiver obtained from the subcontractor. The attorney must discuss any questions or issues regarding these with underwriting counsel for the Company prior to closing.

3. This form is appropriate for use in transactions wherein *no* recent Improvements have been made on the Property. If Labor, Services or Materials (including surveying, architectural, engineering services or rental equipment) for Improvements to the Property have been provided within the 120-Day Lien Period (as defined in the Agreement) (other than minor repairs to existing Improvements completed by Owner without the assistance of a Contractor or supplier, or with evidence of payment at or before closing of completed work), then either the
- NCLTA Form #2: OWNER/CONTRACTOR AFFIDAVIT, WAIVER OF LIENS AND INDEMNITY AGREEMENT (FOR CONSTRUCTION RECENTLY COMPLETED) or
- NCLTA Form #3: OWNER/CONTRACTOR AFFIDAVIT, INDEMNITY AND LIEN SUBORDINATION AGREEMENT (FOR CONSTRUCTION IN PROCESS OR IMMEDIATELY CONTEMPLATED WITH CONSTRUCTION LOAN) should be used, or
- NCLTA Form #5 (Owner) in conjunction with NCLTA Forms 6 and 7 (Potential Lien Claimants), as applicable, should be used.

Note, however, that in the situation in which vacant unimproved Property is to be conveyed and the *purchaser* has already retained Contractors, the *seller* may execute this form, and the purchaser would provide NCLTA Form #3 or NCLTA Form #5, as applicable as noted above, with regard to any potential combined purchase and construction loan.

4. **NOTE:** There may be transactions where no Improvements have been made within the 120-Day Lien Period but work under an executory contract with the Owner continues after closing. An "executory contract" is one under which certain obligations remain to be performed in the future. Such post-closing Improvements may give rise to lien rights in the Property. An example is a lot purchase transaction involving the developer in a subdivision where development or infrastructure work has temporarily stopped but could or would be restarted after the date of this affidavit. In this scenario the NCLTA Form #2 or NCLTA Form #3 should be used.

5. Any variances in execution of this form or in parties signing must be approved by underwriting counsel for the Company prior to closing.

NORTH CAROLINA DEED OF TRUST

SATISFACTION: The debt secured by the within Deed of Trust together with the note(s) secured thereby has been satisfied in full.
This the ______ day of ______________________, 20__
Signed: ____

Parcel Identifier No. E900000565 ______ Verified by ____________ County on the ____ day of ______________, 20__
By: ____

Mail/Box to: Hamilton Stephens Steele + Martin, PLLC (GWS), 201 South College Street, Suite 2020, Charlotte, NC 28244

This instrument was prepared by: Hamilton Stephens Steele + Martin, PLLC (GWS)

Brief description for the Index: 138 Arnold Palmer Drive, Advance, NC 27006

THIS DEED of TRUST made this 27th day of October, 2016, by and between:

GRANTOR	TRUSTEE	BENEFICIARY
DAVID W. SCHAMENS and wife, PILIANA SCHAMENS and **INVICTUS REAL ESTATE INVESTMENT, LLP** Address: 138 Arnold Palmer Drive Advance, NC 27006	**HAMILTON STEPHENS STEELE + MARTIN, PLLC** Address: 201 South College Street Suite 2020 Charlotte, NC 28244	**AGGIE INVESTMENT, LLC** Address:

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor, Trustee, and Beneficiary as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, That whereas the Grantor is indebted to the Beneficiary in the principal sum of Five Hundred Seventy Thousand One Hundred Seventy-Nine and 69/100 Dollars ($570,179.69), as evidenced by a Promissory Note of even date herewith, the terms of which are incorporated herein by reference. The final due date for payments of said Promissory Note, if not sooner paid, is two hundred forty five (245) days from the date of the Promissory Note.

NOW, THEREFORE, as security for said indebtedness, advancements and other sums expended by Beneficiary pursuant to this Deed of Trust and costs of collection (including attorneys fees as provided in the Promissory Note) and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor has bargained, sold, given and conveyed and does by these presents bargain, sell, give, grant and convey to said Trustee, his heirs, or successors, and assigns, all of that certain lot, parcel of land or condominium unit situated in the City of Advance, Farmington Township, Davie County, North Carolina, (the "Premises") and more particularly described as follows:

BEING KNOWN AND DESIGNATED as Lot 565 in Oak Valley, Section 9A, Palmer's Ridge of Oak Valley, according to the plat thereof recorded in Plat Book 7 at Page 69, in the Office of the Register of Deeds of Davie County, North Carolina.

TO HAVE AND TO HOLD said Premises with all privileges and appurtenances thereunto belonging, to said Trustee, his heirs, successors, and assigns forever, upon the trusts, terms and conditions, and for the uses hereinafter set forth.

If the Grantor shall pay the Note secured hereby in accordance with its terms, together with interest thereon, and any renewals or extensions thereof in whole or in part, all other sums secured hereby and shall comply with all of the covenants, terms and conditions of this Deed of Trust, then this conveyance shall be null and void and may be canceled of record at the request and the expense of the Grantor.

If, however, there shall be any default (a) in the payment of any sums due under the Note, this Deed of Trust or any other instrument securing the Note, or (b) if there shall be default in any of the other covenants, terms or conditions of the Note secured hereby, or any failure or neglect to comply with the covenants, terms or conditions contained in this Deed of Trust or any other instrument securing the Note, then and in any of such events, without further notice or right to cure, it shall be lawful for and the duty of the Trustee, upon request of the Beneficiary, to sell the land herein conveyed at public auction for cash, after having first giving such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as may then be required by law and giving such notice and advertising the time and place of such sale in such manner as may then be provided by law, and upon such and any resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey title to the purchaser in as full and ample manner as the Trustee is empowered. The Trustee shall be authorized to retain an attorney to represent him in such proceedings.

The proceeds of the Sale shall after the Trustee retains his commission, together with reasonable attorneys fees incurred by the Trustee in such proceedings, be applied to the costs of sale, including, but not limited to, costs of collection, taxes, assessments, costs of recording, service fees and incidental expenditures, the amount due on the Note hereby secured and advancements and other sums expended by the Beneficiary according to the provisions hereof and otherwise as required by the then existing law relating to foreclosures. The Trustee's commission shall be five percent (5%) of the gross proceeds of the sale or the minimum sum of $1,000 whichever is greater, for a completed foreclosure. In the event foreclosure is commenced, but not completed, the Grantor shall pay all expenses incurred by Trustee, including reasonable attorneys fees, and a partial commission computed on five per cent (5%) of the outstanding indebtedness or the above stated minimum sum, whichever is greater, in accordance with the following schedule, to-wit: one-fourth (¼) thereof before the Trustee issues a notice of hearing on the right to foreclosure; one-half (½) thereof after issuance of said notice, three-fourths (¾) thereof after such hearing; and the greater of the full commission or minimum sum after the initial sale.

And the said Grantor does hereby covenant and agree with the Trustee as follows:

1. INSURANCE. Grantor shall keep all improvements on said land, now or hereafter erected, constantly insured for the benefit of the Beneficiary against loss by fire, windstorm and such other casualties and contingencies, in such manner and in such companies and for such amounts, not less than that amount necessary to pay the sum secured by this Deed of Trust, and as may be satisfactory to the Beneficiary. Grantor shall purchase such insurance, pay all premiums therefor, and shall deliver to Beneficiary such policies along with evidence of premium payments as long as the Note secured hereby remains unpaid. If Grantor fails to purchase such insurance, pay premiums therefor or deliver said policies along with evidence of payment of premiums thereon, then Beneficiary, at his option, may purchase such insurance. Such amounts paid by Beneficiary shall be added to the principal of the Note secured by this Deed of Trust, and shall be due and payable upon demand of Beneficiary. All proceeds from any insurance so maintained shall at the option of Beneficiary be applied to the debt secured hereby and if payable in installments, applied in the inverse order of maturity of such installments or to the repair or reconstruction of any improvements located upon the Property.

2. TAXES, ASSESSMENTS, CHARGES. Grantor shall pay all taxes, assessments and charges as may be lawfully levied against said Premises within thirty (30) days after the same shall become due. In the event that Grantor fails to so pay all taxes, assessments and charges as herein required, then Beneficiary, at his option, may pay the same and the amounts so paid shall be added to the principal of the Note secured by this Deed of Trust, and shall be due and payable upon demand of Beneficiary.

3. ASSIGNMENTS OF RENTS AND PROFITS. Grantor assigns to Beneficiary, in the event of default, all rents and profits from the land and any improvements thereon, and authorizes Beneficiary to enter upon and take possession of such land and

improvements, to rent same, at any reasonable rate of rent determined by Beneficiary, and after deducting from any such rents the cost of reletting and collection, to apply the remainder to the debt secured hereby.

4. PARTIAL RELEASE. Grantor shall not be entitled to the partial release of any of the above described property unless a specific provision providing therefor is included in this Deed of Trust. In the event a partial release provision is included in this Deed of Trust, Grantor must strictly comply with the terms thereof. Notwithstanding anything herein contained, Grantor shall not be entitled to any release of property unless Grantor is not in default and is in full compliance with all of the terms and provisions of the Note, this Deed of Trust, and any other instrument that may be securing said Note.

5. WASTE. The Grantor covenants that he will keep the Premises herein conveyed in as good order, repair and condition as they are now, reasonable wear and tear excepted, and will comply with all governmental requirements respecting the Premises or their use, and that he will not commit or permit any waste.

6. CONDEMNATION. In the event that any or all of the Premises shall be condemned and taken under the power of eminent domain, Grantor shall give immediate written notice to Beneficiary and Beneficiary shall have the right to receive and collect all damages awarded by reason of such taking, and the right to such damages hereby is assigned to Beneficiary who shall have the discretion to apply the amount so received, or any part thereof, to the indebtedness due hereunder and if payable in installments, applied in the inverse order of maturity of such installments, or to any alteration, repair or restoration of the Premises by Grantor.

7. WARRANTIES. Grantor covenants with Trustee and Beneficiary that he is seized of the Premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that he will warrant and defend the title against the lawful claims of all persons whomsoever, except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

a. Covenants recorded in Book 175, Page 143, as amended in Book 211, Page 436.
b. Matters shown on the plat recorded in Plat Book 7, Page 69; and
c. Easement to Duke Power Company recorded in Book 187, Page 377.

8. SUBSTITUTION OF TRUSTEE. Grantor and Trustee covenant and agree to and with Beneficiary that in case the said Trustee, or any successor trustee, shall die, become incapable of acting, renounce his trust, or for any reason the holder of the Note desires to replace said Trustee, then the holder may appoint, in writing, a trustee to take the place of the Trustee; and upon the probate and registration of the same, the trustee thus appointed shall succeed to all rights, powers and duties of the Trustee.

[X] **THE FOLLOWING PARAGRAPH, 9. SALE OF PREMISES, SHALL NOT APPLY UNLESS THE BLOCK TO THE LEFT MARGIN OF THIS SENTENCE IS MARKED AND/OR INITIALED.**

9. SALE OF PREMISES. Grantor agrees that if the Premises or any part thereof or interest therein is sold, assigned, transferred, conveyed or otherwise alienated by Grantor, whether voluntarily or involuntarily or by operation of law [other than: (i) the creation of a lien or other encumbrance subordinate to this Deed of Trust which does not relate to a transfer of rights of occupancy in the Premises; (ii) the creation of a purchase money security interest for household appliances; (iii) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety; (iv) the grant of a leasehold interest of three (3) years or less not containing an option to purchase; (v) a transfer to a relative resulting from the death of a Grantor; (vi) a transfer where the spouse or children of the Grantor become the owner of the Premises; (vii) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the Grantor becomes an owner of the Premises; (viii) a transfer into an inter vivos trust in which the Grantor is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the Premises], without the prior written consent of Beneficiary, Beneficiary, at its own option, may declare the Note secured hereby and all other obligations hereunder to be forthwith due and payable. Any change in the legal or equitable title of the Premises or in the beneficial ownership of the Premises, including the sale, conveyance or disposition of a majority interest in the Grantor if a corporation or partnership, whether or not of record and whether or not for consideration, shall be deemed to be the transfer of an interest in the Premises.

10. ADVANCEMENTS. If Grantor shall fail to perform any of the covenants or obligations contained herein or in any other instrument given as additional security for the Note secured hereby, the Beneficiary may, but without obligation, make advances to perform such covenants or obligations, and all such sums so advanced shall be added to the principal sum, shall bear interest at the rate provided in the Note secured hereby for sums due after default and shall be due from Grantor on demand of the Beneficiary. No advancement or anything contained in this paragraph shall constitute a waiver by Beneficiary or prevent such failure to perform from constituting an event of default.

11. INDEMNITY. If any suit or proceeding be brought against the Trustee or Beneficiary or if any suit or proceeding be brought which may affect the value or title of the Premises, Grantor shall defend, indemnify and hold harmless and on demand reimburse Trustee or Beneficiary from any loss, cost, damage or expense and any sums expended by Trustee or Beneficiary shall bear interest as provided in the Note secured hereby for sums due after default and shall be due and payable on demand.

12. WAIVERS. Grantor waives all rights to require marshaling of assets by the Trustee or Beneficiary. No delay or omission of the Trustee or Beneficiary in the exercise of any right, power or remedy arising under the Note or this Deed of Trust shall be deemed a waiver of any default or acquiescence therein or shall impair or waive the exercise of such right, power or remedy by Trustee or Beneficiary at any other time.

13. CIVIL ACTION. In the event that the Trustee is named as a party to any civil action as Trustee in this Deed of Trust, the Trustee shall be entitled to employ an attorney at law, including himself if he is a licensed attorney, to represent him in said action

and the reasonable attorney's fee of the Trustee in such action shall be paid by the Beneficiary and added to the principal of the Note secured by this Deed of Trust and bear interest at the rate provided in the Note for sums due after default.

14. PRIOR LIENS. Default under the terms of any instrument secured by a lien to which this Deed of Trust is subordinate shall constitute default hereunder.

15. OTHER TERMS.

NOTICE. The Grantors hereby appoints William Trosch as his/her/its/their agent for purposes of accepting any notices and service of process required in connection with this Deed of Trust or by applicable law. Any notices or service of process required in connection with this Note or by applicable law may be delivered to William Trosch, Esq., Conrad, Trosch & Kemmy, P.A., Suite 809, Cameron Brown Building, 301 South McDowell Street, Charlotte, NC 28204, by hand delivery, certified mail, or overnight carrier and delivery of a notice or process in such matter shall be deemed valid delivery of such notice and valid service of process under this Deed of Trust and applicable law, including, without limitation, Rule 4 of the North Carolina Rules of Civil Procedure and Chapter 45 of the North Carolina General Statutes

IN WITNESS WHEREOF, each Grantor has duly executed the foregoing as of the day and year first above written.

INVICTUS REAL ESTATE INVESTMENT, LLP
(Entity Name)

By: [signature]
Title: GENERAL PARTNER

[signature] (SEAL)
DAVID W. SCHAMENS

[signature] (SEAL)
PILIANA SCHAMENS

State of North Carolina - County of Forsyth

I, the undersigned Notary Public of the County and State aforesaid, certify that DAVID W. SCHAMENS personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 27th day of October, 2016.

My Commission Expires: June 12, 2019

[signature]
Notary Public

BRIAN HUFFMAN
Notary Public - North Carolina
Davidson County
My Commission Expires June 12, 2019

State of North Carolina - County of Forsyth

I, the undersigned Notary Public of the County and State aforesaid, certify that PILIANA SCHAMENS personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 27th day of October, 2016.

My Commission Expires: June 12, 2019

[signature]
Notary Public

BRIAN HUFFMAN
Notary Public - North Carolina
Davidson County
My Commission Expires June 12, 2019

State of North Carolina - County of Forsyth

I, the undersigned Notary Public of the County and State aforesaid, certify that David W. Schamens personally came before me this day and acknowledged that he is the General Partner of INVICTUS REAL ESTATE INVESTMENT, LLP, a North Carolina limited partnership, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 27th day of October, 2016.

My Commission Expires: June 12, 2019

[signature]
Notary Public

BRIAN HUFFMAN
Notary Public - North Carolina
Davidson County
My Commission Expires June 12, 2019

SATISFACTION: The debt evidenced by this Note has been satisfied in full this
________ day of ____________, 20______

Signed: ________________________________

PROMISSORY NOTE

CHARLOTE, NC

$570,179.69

OCTOBER 27, 2016

FOR VALUE RECEIVED the undersigned, jointly and severally, promise to pay to Aggie Investment, LLC. or order, the principal sum of Five Hundred and Seventy Thousand One Hundred and Seventy-Nine and 69/100 DOLLARS ($570,179.69), with interest from June 17, 2016, at the rate of eight per cent (8%) per annum on the unpaid balance until paid or until default, both principal and interest in lawful money of the United States of America, at the office of Aggie Investments, LLC or at such place as the legal holder hereof may designate in writing. It is understood and agreed that additional amounts may be advanced by the holder hereof as provided in the instruments, if any, securing this Note and such advances will be added to the principal of this Note and will accrue interest at the above specified rate of interest from the date of advance until paid. The principal and interest shall be due and payable as follows:

The first installment payment of Fifty Thousand Dollars and No/100 ($50,000.00) is due 95 days from the date of this Note, with subsequent installment payments in the amount of Fifty Thousand Dollars and No/100 ($30,000.00) due every thirty (30) days thereafter until paid in full pursuant to the terms of the Confidential Settlement Agreement and Release of even date herewith between Aggie Investment, LLC, the undersigned and additional parties (the "Settlement Agreement"). Time is of the essence with respect to each and every payment.

If payable in installments, each such installment shall, unless otherwise provided, be applied first to payment of interest then accrued and due on the unpaid principal balance, with the remainder applied to the unpaid principal.

Unless otherwise provided, this Note may be prepaid in full or in part at any time without penalty or premium. Partial payments shall be applied to installments due in reverse order of their maturity.

In the event of (a) default in payment of any installment of principal or interest hereof as the same becomes due, or (b) default under the terms of any instrument securing this Note, then in either such event the holder may, without further notice or right to cure of the makers, declare the remainder of the principal sum, together with all interest accrued thereon, at once due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any other time. The unpaid principal of this Note and any part thereof, accrued interest and all other sums due under this Note and the Deed of Trust, if any, shall bear interest at the rate of eight per cent (8%) per annum after default until paid, including on any amounts due pursuant to a judgment entered on this Note.

All parties to this Note, including maker and any sureties, endorsers, or guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal, interest and all other sums due under this Note and the Deed of Trust notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such charge or charges and agree that the same may be made without notice or consent of any of them.

Upon default the holder of this Note may employ an attorney to enforce the holder's rights and remedies, and the maker, principal, surety, guarantor and endorsers of this Note hereby agree to pay to the holder reasonable attorney fees not exceeding a sum equal to fifteen percent (15%) of the outstanding balance owing on said Note, plus all otherreasonable expenses incurred by the holder in exercising any of the holder's rights and remedies upon default. The rights and remedies of the holder as provided in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property described in the Deed of Trust or any other funds, property or security held by the holder for payment or security, in the sole discretion of the holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

The undersigned hereby appoints William Trosch as his/her/its/their agent for purposes of accepting any notices and service of process required in connection with this Note or by applicable law. Any notices or service of process required in connection with this Note or by applicable law may be delivered to William Trosch, Esq., Conrad, Trosch & Kemmy, P.A., Suite 809, Cameron Brown Building, 301 South McDowell Street, Charlotte, NC 28204, by hand delivery, certified mail, or overnight carrier and delivery of a notice or process in such matter shall be deemed valid delivery of such notice and valid service of process under this Note and applicable law, including, without limitation, Rule 4 of the North Carolina Rules of Civil Procedure and Chapter 45 of the North Carolina General Statutes.

This Note is to be governed and construed in accordance with the laws of the State of North Carolina.

This Note is given for value, and is secured by a deed of trust which is a first lien upon the property therein described. This Note is being delivered in accordance with the Settlement Agreement. The terms and conditions of the Settlement Agreement that are applicable to this Note are incorporated herein by reference.

IN TESTIMONY WHEREOF, each entity has caused this instrument to be executed in its legal name by its authorized representative, the day and year first above written.

INVICTUS REAL ESTATE INVESTMENT, LLP

By: ______________________

Print name: David W. Schamens

Its: General Partner

SEAL-STAMP

BRIAN HUFFMAN
Notary Public - North Carolina
Davidson County
My Commission Expires June 12, 2019

NORTH CAROLINA, Forsyth County.

I, a Notary Public of the County and state aforesaid, certify that David W. Schamens personally appeared before me this day and acknowledged that he/she is General Partner of, Invictus Real Estate Investment, LLP, and that by authority duly given and as the act of the LLP, the foregoing instrument was signed in its name. Witness my hand and official stamp or seal, this 27th day of October, ________________ 2016.

My commission expires: 6/12/19 ______________ Notary Public

IN TESTIMONY WHEREOF, each individual maker has hereunto set his hand and adopted as his seal the word "SEAL" appearing beside his name, the day and year first above written.

______________________________ (SEAL)
David W. Schamens

SEAL-STAMP

BRIAN HUFFMAN
Notary Public - North Carolina
Davidson County
My Commission Expires June 12, 2019

NORTH CAROLINA, Forsyth, County.

I, Brian Huffman, a Notary Public of the County and State aforesaid, certify that **David W. Schamens**, Grantor, personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument for the purpose stated therein and in the capacity indicated. Witness my hand and official stamp or seal, this 27th day of October, 2016.

My commission expires: 6/12/2019

______________ Notary Public

IN TESTIMONY WHEREOF, each individual maker has hereunto set his hand and adopted as his seal the word "SEAL" appearing beside his name, the day and year first above written.

_______________________________ (SEAL)
Piliana M. Schamens

SEAL-STAMP

BRIAN HUFFMAN
Notary Public - North Carolina
Davidson County
My Commission Expires June 17, 2019

NORTH CAROLINA Forsyth County.

I, Brian Huffman, a Notary Public of the County and State aforesaid, certify that **Piliana Schamens**, Grantor, personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument for the purpose stated therein and in the capacity indicated. Witness my hand and official stamp or seal, this 27th day of October 2016.

My commission expires: 6/17/2019

_______________ Notary Public

UNANIMOUS WRITTEN CONSENT OF THE PARTNERS OF PILLAR CAPITAL PARTNERS

The undersigned, representing the partners (the "Partners") of PILLAR CAPITAL PARTNERS ("PCP"), hereby adopt the following resolutions by signing its written consent hereto:

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. The Subordination Agreement, subordinating the Invictus Deed of Trust and the Schamens Deed of Trust (as those terms are defined herein and in the Subordination Agreement) to the Deed of Trust dated October, 2016 to Hamilton Stephens Steele & Martin, PLLC, as Trustee for the benefit of Aggie Investment, LLC, is approved.
   a. The "Invictus Deed of Trust" refers to that Deed of Trust executed by INVICTUS REAL ESTATE INVESTMENT, LLP on the Property (as that term is defined herein and in the Subordination Agreement) to John B. Nelson, as Trustee for the benefit of PCP, which was recorded in the Davie County Public Registry in Book 987 at Page 681.
   b. The "Schamens Deed of Trust" refers to that Deed of Trust executed by David W. Schamens on the Property (as that term is defined herein and in the Subordination Agreement) to John B. Nelson, as Trustee for the benefit of PCP, which was recorded in the Davie County Public Registry in Book 988 at Page 721.
   c. The "Property" refers to the real property knowns as Lot 565 in Oak Valley, Section 9A, Palmer's Ridge of Oak Valley, according to the plat thereof recorded in Plat Book 7 at Page 69, in the Office of the Register of Deeds of Davie County, North Carolina.

The undersigned, in adopting the foregoing resolutions by signing their consent hereto, do confirm, ratify and approve the acts stated in said resolutions and direct that this written consent be filed with the records of the LLP. These resolutions may be executed in counterparts and delivered electronically. Without otherwise limiting the generality of the foregoing, these resolutions shall be as effective as if adopted by the undersigned at a meeting duly called pursuant to proper notice, all as required by the laws of the State of Delaware and the LLP's governing documents.

This action is effective as of November 3, 2016.

MANAGING PARTNER:

Leisa Rowe

Print Name: Leisa Rowe

UNANIMOUS WRITTEN CONSENT OF THE PARTNERS OF PILLAR CAPITAL PARTNERS

The undersigned, representing the partners (the "Partners") of PILLAR CAPITAL PARTNERS ("PCP"), hereby adopt the following resolutions by signing its written consent hereto:

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. The Subordination Agreement, subordinating the Invictus Deed of Trust and the Schamens Deed of Trust (as those terms are defined herein and in the Subordination Agreement) to the Deed of Trust dated October, 2016 to Hamilton Stephens Steele & Martin, PLLC, as Trustee for the benefit of Aggie Investment, LLC, is approved.
   a. The "Invictus Deed of Trust" refers to that Deed of Trust executed by INVICTUS REAL ESTATE INVESTMENT, LLP on the Property (as that term is defined herein and in the Subordination Agreement) to John B. Nelson, as Trustee for the benefit of PCP, which was recorded in the Davie County Public Registry in Book 987 at Page 681.
   b. The "Schamens Deed of Trust" refers to that Deed of Trust executed by David W. Schamens on the Property (as that term is defined herein and in the Subordination Agreement) to John B. Nelson, as Trustee for the benefit of PCP, which was recorded in the Davie County Public Registry in Book 988 at Page 721.
   c. The "Property" refers to the real property knowns as Lot 565 in Oak Valley, Section 9A, Palmer's Ridge of Oak Valley, according to the plat thereof recorded in Plat Book 7 at Page 69, in the Office of the Register of Deeds of Davie County, North Carolina.

The undersigned, in adopting the foregoing resolutions by signing their consent hereto, do confirm, ratify and approve the acts stated in said resolutions and direct that this written consent be filed with the records of the LLP. These resolutions may be executed in counterparts and delivered electronically. Without otherwise limiting the generality of the foregoing, these resolutions shall be as effective as if adopted by the undersigned at a meeting duly called pursuant to proper notice, all as required by the laws of the State of Delaware and the LLP's governing documents.

This action is effective as of November 3, 2016.

MANAGING PARTNER:

Leisa Rowe

Print Name: Leisa Rowe

{00363529.DOC V. D190.020173;}

This Agreement subordinates the Invictus Deed of Trust and the Schamens Deed of Trust to the Lender's Deed of Trust and any renewals, future advances, amendments, modifications, or rearrangements of the promissory note evidencing the Loan or the Deed of Trust.

This Agreement contains the whole agreement between the parties hereto as to the subordination of the lien of the Invictus Deed of Trust and the Schamens Deed of Trust to the lien of the Lender's Deed of Trust, and the priority thereof. There are no agreements, written or oral, between the parties to this Agreement outside or separate from this Agreement and all prior negotiations, if any, are merged into this Agreement.

This Agreement shall inure to the benefit of and be binding upon the legal representatives, heirs, devisees, successors, and assigns of the parties and shall be governed by North Carolina laws and the laws of the United States.

IN TESTIMONY WHEREOF, we have hereunto set our hands and seals, this _____ day of ________, 20____.

PILLAR CAPITAL PARTNERS

by: Leisa Rowe
Leisa Rowe, Managing Partner

STATE OF : North Carolina

COUNTY OF: Iredell

I, a Notary Public, in and for the said County and State, do hereby certify that Lisa Rowe, personally came before me this day an acknowledged that he or she is the General Partner (title) of PILLAR CAPITAL PARTNERS, and that the foregoing instrument was signed in its name by its General Partner (title) on behalf of the partnership.

WITNESS my hand and notary seal on this the 3 day of November, 2016.

(SEAL)

WENDY M BERGENSON
NOTARY PUBLIC
IREDELL COUNTY, NC
My Commission Expires 8-16-2020

Wendy M. Bergenson
Notary Public
My Commission Expires: 8-16-2020

MAIL TO: CONRAD TROSCH & KEMMY, PA
301 South McDowell Street #1001
CHARLOTTE, NC 28204

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT, entered into this _____ day of ________ , 20____, by PILLAR CAPITAL PARTNERS ("Pillar") in favor of AGGIE INVESTMENT, LLC., the ("Lender").

WHEREAS, DAVID W. SCHAMENS ("Owner") is the owner of the real property knowns as Lot 565 in Oak Valley, Section 9A, Palmer's Ridge of Oak Valley, according to the plat thereof recorded in Plat Book 7 at Page 69, in the Office of the Register of Deeds of Davie County, North Carolina (the "Property").

WHEREAS, prior to Owner's acquisition of the Property, INVICTUS REAL ESTATE INVESTMENT, LLP ("Invictus") executed a Deed of Trust on the Property to John B. Nelson, as Trustee for the benefit of Pillar, which was recorded in the Davie County Public Registry in Book 987 at Page 681 (the "Invictus Deed of Trust").

WHEREAS, Owner also executed a Deed of Trust on the Property to John B. Nelson, as Trustee for the benefit of Pillar, which was recorded in the Davie County Public Registry in Book 988 at Page 721 (the "Schamens Deed of Trust").

AND WHEREAS, Owner has requested that Pillar subordinate the Invictus Deed of Trust and the Schamens Deed of Trust to the lien of that certain Deed of Trust dated the ___ day of October, 2016, to Hamilton Stephens Steele & Martin, PLLC as Trustee for the benefit of Lender, recorded in the Davie County Public Registry in Book _____ at Page _______ (the "Lender's Deed of Trust") and securing a loan in the original amount of $570,179.69 (the "Loan").

NOW, THEREFORE, for valuable consideration, and subject to the terms of this Subordination Agreement, Pillar and Trustee hereby do the following:

1. Subordinate the liens of the Invictus Deed of Trust and the Schamens Deed of Trust to the lien of the Lender's Deed of Trust. Trustee and Pillar do hereby reserve all rights, title and interest under the Invictus Deed of Trust and the Schamens Deed of Trust except as set forth in this Subordination Agreement; and

2. Agree that neither Pillar nor Trustee shall accept any payments or other consideration from Owner or Invictus until such time as the Loan is paid in full.

UNANIMOUS WRITTEN CONSENT OF THE PARTNERS OF INVICTUS REAL ESTATE INVESTMENT, LLP

The undersigned, being all the partners (the "Partners") of INVICTUS REAL ESTATE INVESTMENT, LLP (the "LLP"), hereby adopt the following resolutions by signing their written consent hereto:

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. That the Confidential Settlement Agreement and Release (the "Agreement") entered into between the LLP and the Dugan parties (as that term is defined in the Agreement), along with other Invictus parties (as that term is defined in the Agreement) dated October 2016 is approved.

2. That the Promissory Note (as that term is defined in the Agreement) is approved.

3. That the Deed of Trust (as that term is defined in the Agreement) is approved.

4. That the LLP is authorized to take any actions to cause the Deed of Trust to be a first lien Deed of Trust on the real property located at 138 Arnold Palmer Drive, Advance, North Carolina.

The undersigned, in adopting the foregoing resolutions by signing their consent hereto, do confirm, ratify and approve the acts stated in said resolutions and direct that this written consent be filed with the records of the LLP. These resolutions may be executed in counterparts and delivered electronically. Without otherwise limiting the generality of the foregoing, these resolutions shall be as effective as if adopted by the undersigned at a meeting duly called pursuant to proper notice, all as required by the laws of the State of North Carolina and the LLP's governing documents.

This action is effective as of October 24, 2016.

GENERAL PARTNERS:

Print Name: David W. Schamens

Exhibit F

Matter Number 30780 | Schamens, David v. Aggie Investments, LLC | Trust Balance Forward $0.00

Trust Ending Balance $50,000.00

Client Name David W. Schamens

Start Date 01/02/1899 End Date 03/23/2017

Date	Deposits	Withdrawals	Account #	Payee	Description	Transaction ID	Transaction Type
05-12-2015	$10,000.00		11035.00	Trust Deposit	Wire Transfer/CTK30780/Schamens	4637	TR
05-03-2016		$10,000.00	11035.00	Conrad Trosch & Ke...	Invoice/CTK30780/Schamens	8487	TD
07-15-2016	$140,000.00		11035.00	Trust Deposit	Teller Deposit/CTK30780/Schamens	9304	TR
07-28-2016		$20.00	11035.00	Mecklenburg Count...	Notice of Hearing FF/CTK30780A/Sc...	9478	TD
08-10-2016		$14,980.00	11035.00	Conrad, Trosch & K...	Invoice/CTK30780/Schamens	9574	TD
09-09-2016		$50,000.00	11035.00	Conrad Trosch & Ke...	partial refund/CTK30780/Schamens	9949	TD
[redacted]							
03-03-2017	$50,000.00		11035.00	Trust Deposit	Wire Transfer.	11916	TR

Exhibit G

Bank of America — Business Online Banking — Tradedesk Financial Group

Accounts | Bill Pay | Transfers | Business Services | Special Offers & Deals | Tools & Investing | Oper

Send money to/from other banks, or to someone else using an account nu

Make Transfer   Transfer Activity   Add Account/Recipient   Manage Accounts/Recipie

Transfer status: Complete
Confirmation Number: 20170303001338835

Transfer Accounts

Accounts

From: Business Advantage Chk - 2714

To: Conrad Trosch Kemmy PA Trust Acct (Bank of America)

Transfer Details

Send amount

Send amount: $50,000.00

Additional fee: $30.00

Transfer description

from Tradedesk Financial Group, Inc.

Transfer dates

Frequency: One time only

Delivery speed: Same Day

Start on date: 03/03/2017

Estimated delivery date: 03/03/2017
Note:The receiving bank may make funds available later than this.

Dave

David W. Schamens
CEO, Managing Director, TradeStream Analytics, Ltd.

Exhibit H

NORTH CAROLINA)
)
DAVIE COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
17 SP 47

FILED
2017 ... AM 11: 21
DAVIE CO., C.S.C.
BY CFH

In the Matter of the Foreclosure of the Deed of Trust executed by David W. Schamens and Piliana Schamens, and Invictus Real Estate Investment, LLP, Trustors in Deed of Trust recorded in Book 1034, at Page 0544, Davie County Registry

NOTICE OF HEARING AS TO COMMENCEMENT OF FORECLOSURE PROCEEDINGS

Certification regarding Emergency Program to Reduce Home Foreclosures: The Substitute Trustee herby certifies that the loan secured by the Deed of Trust being foreclosed in this action:

IS A NOT HOME LOAN as defined by North Carolina General Statute Section 45-101(1b) because debt was not incurred by the borrower primarily for personal, family, or household purposes. NCGS §45-101(1b)c.

Default having been made in the payment of an indebtedness in the original amount of $570, 179.69 as evidenced by a Note dated October 27, 2016, (the "Note"), said Note secured by a Deed of Trust dated October 27, 2016, and recorded in Book 1034 at Page 0544, in the office of the Register of Deeds of Davie County (the "Deed of Trust"), which Deed of Trust was executed by David W. Schamens, individually and as general partner of Invictus Real Estate Investment, LLP, Piliana Schamens, and Invictus Real Estate Investment, LLP for the benefit of Aggie Investment, LLC, the original holder of the Note and Deed of Trust (the "Lender") being also the present holder of said Note which has been demanded in full as therein provided and the said holder having demanded foreclosure;

THE UNDERSIGNED HEREBY GIVES NOTICE OF A HEARING AS FOLLOWS TO:

David W. Schamens
138 Arnold Palmer Drive
Advance, North Carolina 27006

Piliana Schamens
138 Arnold Palmer Drive
Advance, North Carolina 27006

Invictus Real Estate Investment, LLP
c/o General Partner, David W. Schamens
138 Arnold Palmer Drive
Advance, North Carolina 27006

1. **A hearing will be held before the Clerk of Superior Court of Davie County in Mocksville, North Carolina, on April 18, 2017, at 10:00 a.m.** The hearing may be held on a later date than that heretofore specified and you will be notified of any change in the hearing date. If the Clerk of the Davie Superior Court makes the appropriate findings and authorization, the **foreclosure sale will be scheduled to be held at the Davie County Court House in Mocksville, North Carolina, on May 18, 2017, at 12:00 Noon.**

2. The Lender whose address is Aggie Investment, LLC c/o Mark Kutny, Hamilton Stephens Steele & Martin, PLLC, 201 South College Street, Suite 2020, Charlotte, North Carolina, 28244, is the holder of the Note, secured by the Deed of Trust.

The original Trustee named in said Deed of Trust was Hamilton Stephens Steele + Martin, PLLC, and Stanley P. Dean (the "Substitute Trustee") was substituted as Trustee in said Deed of Trust by instrument recorded in Book 1044 at Page 1206, in the office of the Register of Deeds of Davie County.

3. The above-mentioned Deed of Trust is a lien on the following property:

BEING KNOWN AND DESIGNATED as Lot No. 565 in Oak Valley, Section 9A, Palmer's Ridge of Oak Valley, according to the plat thereof recorded in Plat Book 7 at Page 69, in the Office of the Register of Deeds of Davie County, North Carolina.

4. You have defaulted in the payment and performance of the obligations specified in the above-mentioned Deed of Trust in the following particular manner, to wit: By your failure

to make payments as specified in the Note and failure to pay the Note, principal and interest, after demand therefor.

5. Lender, the holder of such Deed of Trust, has declared the indebtedness secured thereby due in full and payable immediately and has accelerated the maturity of same.

6. You may pay the total outstanding indebtedness due on the Note, plus foreclosure costs, including compensation to the Substitute Trustee as provided for by law, and reasonable attorney's fees to the Lender to prevent foreclosure by the Substitute Trustee, prior to the date above-mentioned which has been set for hearing. In addition, after the hearing, you retain your rights to redeem the property and prevent the proposed sale by paying the amounts above. You may contact the Lender's counsel, Mark Kutny, at 704-227-1051 to determine the total outstanding balance due on the Note.

7. If you do not satisfy the obligation mentioned in the immediately preceding paragraph, the real estate above-described will be sold at the Davie County Courthouse door in Mocksville, North Carolina, pursuant to the provisions of the Deed of Trust and the provisions of Article 2, Chapter 45, of the General Statutes of the State of North Carolina. A Notice of Sale of said property will be mailed to you at least twenty (20) days prior to the date of said sale.

8. The Lender has confirmed in writing to the Substitute Trustee that, within thirty (30) days of the date of this Notice the debtors were sent by first-class mail, to the debtor(s)' last known address, a written statement indicating the amount of principal and interest claimed in good faith to be owed as of the date of the written statement, a daily interest charge based on the contract rate as of the date of the statement, and the amount of other expenses owed as of the date of the statement, or the same information has been forwarded to the debtors by the Substitute Trustee within thirty (30) days of the date of this Notice.

9. The Lender has provided the Substitute Trustee with a written statement regarding whether any requests have been made by debtors, pursuant to North Carolina General Statute

Section 45-93, about a home loan account, and if such requests have been made, Lender has timely responded to said requests or time to respond has not yet expired as of the date of this Notice or the Lender has confirmed to the Substitute Trustee that the indebtedness secured by the Deed of Trust is not a Home Loan, as defined in North Carolina General Statute Section 45-90.

10. You have the right to appear before the Clerk on the date mentioned above, at which appearance you shall be afforded the opportunity to show cause as to why the foreclosure should not be allowed to be held. If you do not intend to contest the holder's allegations of default, you do not have to appear at the hearing, and your failure to attend the hearing will not affect your right to pay the indebtedness and thereby prevent the proposed sale or your right to attend the actual sale, should you elect to do so. The Substitute Trustee is a neutral party and, while holding that position in the foreclosure proceeding, may not advocate for the secured creditor or for the debtor in the foreclosure proceeding. You have the right to apply to a judge of the superior court pursuant to North Carolina General Statute Section 45-21.34 to enjoin the sale upon any legal or equitable ground that the court may deem sufficient prior to the time that the rights of the parties to the sale or resale become fixed, provided that you comply with the requirements of North Carolina General Statute Section 45-21.34. You have the right to appear at the hearing and contest the evidence that the clerk is to consider under North Carolina General Statute Section 45-21.16(d). If the debtor is currently on military duty the foreclosure may be prohibited by G.S. 45-21.12A. To authorize the foreclosure, the clerk must find the existence of: (i) a valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, (iv) notice to those entitled to notice, (v) that the underlying mortgage debt is not a home loan as defined in North Carolina General Statutes Section 45-101(1b), or if the loan is a home loan under North Carolina General Statutes Section 45-101(1b), that the preforeclosure notice under North Carolina General Statutes Section 45-102 was provided in all material respects, and the periods of time established by Article 11 of Chapter 45,

have elapsed, and (vi) that the sale is not barred by North Carolina General Statutes Section 45-21.12A. If you fail to appear at the hearing, the Substitute Trustee will ask the clerk to enter an order to sell the real property being foreclosed. You have the right to seek the advice of an attorney and free legal services may be available to you by contacting Legal Aid of North Carolina or other legal service organizations.

11. If the foreclosure sale is consummated, the purchaser at such sale will be entitled to the possession of the real estate above-described as of the date of delivery of this Deed, and if you still are in possession you can then be evicted.

12. You should keep the Substitute Trustee whose address is indicated below, notified in writing of your address so that you may be mailed copies of the Notice of Sale setting forth the terms under which the sale will be held and Notices of any postponements or resales.

This the 24 day of March, 2017.

Stanley P. Dean
Substitute Trustee
Dean Law Firm, PLLC
844 West Fourth Street
Winston Salem, NC 27101
336-714-9985